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## Copyright Policy and Enforcement in Higher Education: The Impact on Distance Education

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# Copyright Policy and Enforcement in Higher Education: The Impact on Distance Education

## Abstract

This literature review is to study the current trends in copyright policy among higher education and how abuse of copyright policy, enforcement and laws are impacting the way that educators are able to teach in the classroom and through distance education methods

Copyright Policy and Enforcement in Higher Education:  
The Impact on Distance Education

A Graduate Review  
Submitted to the  
Division of Educational Technology  
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In Partial Fulfillment  
Of the Requirements for the Degree  
Masters of Arts  
UNIVERSITY OF NORTHERN IOWA

by  
Michelle Elizabeth Zilisch

August, 2003

This Review by: Michelle Elizabeth Zilisch

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## ABSTRACT

This literature review is to study the current trends in copyright policy among higher education and how abuse of copyright policy, enforcement and laws are impacting the way that educators are able to teach in the classroom and through distance education methods.



## INTRODUCTION

The reviewer has had an interest in the area of copyright for over a decade and has recently become interested in how institutions of higher education have developed their copyright policies and what type of enforcement is conducted by officials of those institutions in violation of those policies. The reviewer is also interested in how copyright has impacted distance education in the way that materials are developed and utilized in various classroom and learning situations, especially under the current laws and policies that have been enacted in the past five years. The reviewer hopes to suggest possible solutions to universities and instructors for broad policy adoption with suggestions for departmental policies and enforcement. The hope is that these suggestions will help in the reduction of copyright infringement or questions that occur in the distance education and other education settings.

The purpose of this review is to determine what higher education institutions nationwide are doing that has been successful and to suggest alternatives and additions to these current policies. A review of current copyright policies and enforcement procedures at the regent schools in Iowa will be used as the basis for review and suggestion of additional policy additions and enforcement procedures. In addition to the current policies at the three Iowa regent universities there will be an analysis of what is being done nationwide by other universities and professional organizations with regards to copyright violations by their students, staff and faculty, or members.

While there is no easy answer with copyright policy or in its enforcement, it is hopeful that this review will be able to provide higher education administrators and

instructors with a guideline of what key elements should be included in their copyright policy and enforcement procedures manuals with regards to their distance education programs. The reviewer's hope is that higher education students, staff, faculty, and administration will have a better understanding of how copyright violations are in fact stealing and what they can do to prevent themselves and others from stealing the works of others either through plagiarism or the downloading of software, music, and other copyrighted materials off the Internet or through peer to peer transfers.

It is important to understand what copyright, fair use, distance education, peer to peer transfers, software piracy, downloading, uploading, copyright infringement, plagiarism and enforcement all mean and how these terms will be a key part of this review. Additionally, there is a need to understand the various laws or acts (e.g., Digital Millennium Copyright Act and TEACH act) that are important to this review as well as the various agencies and organizations (e.g., RIAA, MPAA, and the U.S. Copyright Office) that play a part in the development of copyright policy and enforcement of that policy.

Key questions that will be answered in this review are as follows: what are the current copyright policies at the three regent schools in Iowa and how do these policies compare to what is being done by other institutions? How enforcement conducted by the Iowa regent schools compared to other institutions and is there any enforcement of the copyright policies? How the current copyright policies impacted by federal copyright law and court decisions and what will future decisions mean to distance education?

## METHODOLOGY

Various methods were utilized by the reviewer to obtain sources for review in this paper. The first method of locating sources was to review what materials the reviewer had already had on hand from previous research. This consisted of seven books published from 1994 to 2000. Various magazine, journal and newspaper articles were also obtained and consisted of twenty additional sources. The reviewer felt it was important to use the materials she had relied upon in the past while also adding additional supporting materials to this review.

### *Search Methods*

A search for more recent publications was conducted using amazon.com and barnesandnoble.com for various books. Search terms that were used by the reviewer in conducting her search on these two sites were as follows: distance education, higher education, copyright policy, copyright enforcement, plagiarism, and digital learning. From the search on these two sites there were a total of 16 books that were found. Of these 16 books, six were obtained by the reviewer to use in for this review.

A search for journal, magazine, and newspaper articles was conducted by using LexisNexis as a search engine. It was ideal to use LexisNexis as a search engine since it has access to legal, technical and educational journals, and articles online with the ability to set the search for specific topics within a certain time period to obtain the most recent articles. The reviewer preferred using LexisNexis as a primary search engine for the majority of the research because of the ability to Shepard (process of determining which laws are still constitutional or have been overturned by other court decisions) information related to legal discussions and court decisions. The terms

that were used for the search were the same as when searched on barnesandnoble.com and amazon.com: distance education, higher education, copyright policy, copyright enforcement, plagiarism, and digital learning. A total of 40 articles were found using these search terms. All of the articles were downloaded for the reviewer to read later and to determine whether or not to use in this paper. These downloaded articles were obtained from the University Wire search feature in the LexisNexis search engine.

Additionally, the reviewer used google.com as a search engine to find additional articles and publications by individuals, agencies and organizations using the following search terms: distance education, copyright, higher education, plagiarism, copyright policy, copyright infringement and copyright enforcement. Over 20,000 hits came from the google.com search. The researcher used multiple terms in a search to narrow the search down to obtain 20 different articles and links which were downloaded for the reviewer to read at a later time for deciding which sources would be used.

### *Selection Process*

The primary method in selection of sources was to select those articles or books written or published by educators, lawyers or legal experts, and technology experts. It was determined that these individuals would have a better insight into the actual area that the reviewer wanted to cover within this review. Of the 16 books that were found from the search on barnesandnoble.com and amazon.com only six were obtained by the reviewer. It was the reviewer's decision to select these publications since they were from lawyers, information technology specialists or federal agencies.

Newspaper, magazine, journal and Internet articles were reviewed to determine if they met one of the following criteria: plagiarism at higher education institutions; student use and/or abuse of copyrighted information on university campuses; university policy and enforcement of student use and abuse; agency or organization enforcement of their copyright rights or laws; lawsuits that impact distance education, instructors or students; and finally, proposed legislation to lessen restrictions on instructors with regards to fair use. If an article met one of the established criteria as stated above an indication marker was put on the article to allow the reviewer to further define the articles. Those articles that met multiple criteria were sources that the reviewer selected for further in depth analysis for this literature review. Articles that came from research journals or professional journals were also selected for their strength to support the credibility of this review.

One term that is beneficial to this review is the impact of software piracy at higher education institutions, however, this was not a term that the reviewer used since many of the links for the information was to websites unrelated to this subject but instead discussed methods to avoid prosecution and get around encryption or security protections. The reviewer decided to remove this term from her search criteria when attempting to locate sources and instead used the term in narrowing located sources that related to student abuse and software piracy occurring at colleges and universities in the United States. This helped reduce the number of sources down to approximately fifteen additional sources that would be applicable to this review.

## ANALYSIS AND DISCUSSION

To begin to develop solutions there is first a need to understand what copyright is and how current laws are impacting the way that teachers and students are able to use materials. Understanding what copyright is and who is responsible for the laws helps in explaining the way that changes can be made and why it may take many years for a single change to be enacted. After becoming familiar with what the laws are administration and instructors will have a better understanding of how copyright infringements are impacting higher education. Once these problems are understood it is possible to review what methods are being used by various instructors, departments, and universities to battle the problems they are experiencing, as well as suggesting additional methods and policies for tackling copyright infringement.

### *What Is Copyright?*

The initial issue that needs to be discussed is what exactly is copyright and how does one claim they have copyright on an item. Black's Law Dictionary defines copyright as being:

The right of literary property as recognized and sanctioned by positive law. An intangible, incorporeal right granted by statute to the author or originator of certain literary or artistic productions, whereby he is invested, for a specified period, with the sole and exclusive privilege of multiplying copies of

the same and publishing and selling them (Nolan & Nolan-Haley, 1990, p. 336).

Black's further defined works of authorship to include various categories, including "(1) literary works; (2) musical works, including any accompanying words; (3) dramatic works, including any accompanying music; (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural works; (6) motion pictures and other audiovisual works; and (7) sound recordings" (Nolan & Nolan-Haley, 1990, p. 336). Having this basic understanding of what the courts determine the meaning to be helps to develop a definition.

For the purposes of this literature review, the reviewer defines copyright to be the following:

The protection granted to an author, creator, composer, or developer of a body of writing, art, music, movie/motion picture, photograph, graphic, or software in which they may make multiple copies for their own personal profit or use with protection from federal law to enforce their claims against those individuals who choose to use it for either financial, social or personal gain without notice, credit or authorized permission from the copyright holder.

The advantage to copyright law is that it "provides a long term of protection (a minimum of 50 years) but protects only the expression of the idea, not the idea itself" (Laudon, Traver & Laudon, 1996, p. 523). Through the use of copyright educators are

able to promote learning that would otherwise be frustrated without the use of freely used and reused ideas and facts (Litman, 2001).

In the United States, “copyright protections now automatically applies to original works, and needs not be applied for, as must for a patent” (Laudon, Traver & Laudon, 1996, p. 523). While in other countries the laws regarding copyright vary greatly, in the United States the federal government enacts all laws regarding copyright and assists in enforcement of punishment of those committing copyright infringements. Some believe that “the original purpose to intellectual property law in the United States was to *promote* the development, distribution, and use of new ideas” (Gilbert, 1996, p. 134). The copyright, patent, and trademark systems were “developed to ensure that adequate incentives went to the originators and publishers of new information to keep them motivated and financially able to continue their work” (Gilbert, 1996, p. 134). As stated by Jessica Litman, professor of law at Wayne State University and author of *Digital Copyright*, “if creators can’t gain some benefit from their creations, they may not bother to make new works” (Litman, 2001, p. 15).

### *What Is Copyright Infringement?*

An infringement of a copyright according to Black’s Law Dictionary is the “unauthorized use of copyrighted material; i.e. use without permission of copyright holder” (Nolan & Nolan-Haley, 1990, p. 781). Infringement can occur when an individual knowingly and without citation or credit to the creator uses a work to present it as their own. This is often considered to be committed by various methods, e.g. plagiarism, file sharing, software piracy, or bootlegging of videos and music. These actions result in creators not properly being credited or compensated for their



creations. This may limit software designers/companies from being able to make further programs or versions of software, or an author from doing further research for their next novel.

Most copyright lawsuits proceed against businesses and institutions (Litman, 2001) and this makes higher education institutions especially susceptible to possible legal action if they are not enforcing copyright policies that are being violated by their students, staff or faculty. According to Professor Jessica Litman “successful plaintiffs can recover substantial damages without needing to prove actual harm to the market for their works” in copyright infringement lawsuits (*Fogarty v. Fantasy, Inc.*, 510 U.S. 517 (1994); Gorman & Ginsburg, *Copyright*, at 729-30 as cited by Litman, 2001, p. 19). Higher education institutions are more susceptible to lawsuits because of the importance placed on research and publication in the pursuit for academic recognition and funding. Additional problems arise since individuals see the universities as giant pocketbooks that could be tapped should someone feel that their creation was stolen by a student or professor. Higher education institutions are often unaware of what is being produced by their students and faculty until the university is served with a lawsuit. After the lawsuit has been filed and made public, the copyright holder realizes that the university cannot afford these costly court actions, nor does the anticipated university cash supply exist.

### *Where Do Copyright Laws Come From?*

Copyright laws are enacted by the federal government and are infrequently adopted or revised to keep pace with the developments of society and technology. The laws that are proposed typically come from special interest groups that working

to help improve existing conditions. In the past few years, the loudest special interest groups have been higher education institutions, libraries, technology developers, instructors, and the music and movie industry.

### *What Do Copyright Laws Protect?*

The copyright laws are designed to protect the intellectual property of fiction and non-fiction writers, composers, and other artists (Douvani, 1997). In the education setting, “copyright protects text writers, test and workbook writers, and software designers of the various media that is utilized in the classroom setting” (Douvani, 1997, p. 300). As the subject of copyright is not simple, one decision often impacts various other areas without much thought given before a bill is passed by Congress. While there may be a monetary reason for enacting a new protection under existing copyright laws, it may severely limit and restrict the use of materials by instructors and universities in the education of students. Many of the restrictions impact the way that distance education courses can and are taught. These restrictions could include the broadcast of images, the use of video, and the distribution of materials to students.

While the federal government is responsible for the enactment of the copyright laws, the individual creator(s) must enforce their copyright through lawsuits that are filed in the federal court system. In addition to Congress enacting copyright laws in the United States, there have been a few international agreements that provide “copyright protection across national borders” (Lynch, 2002, p. 137). The major agreements include the Berne Convention, the Rome Convention, and TRIBs (trade-related intellectual property) agreements (Lynch, 2002). These

agreements and laws vary by the involvement of special interest groups and the development of technology and laws in that country. Currently the United States, Great Britain, Germany and Norway have some of the most restrictive and developed copyright laws in the world.

### *How Long Does Copyright Protection Last?*

Copyright terms have been getting longer with the involvement of special interest groups and creators who are trying to protect their own works. Between 1978 and 1998, most copyrights would be expiring after their initially granted seventy-fifth year of protection. Fearing the imminent expiration of its 1927 creation, Mickey Mouse, Disney turned to Europe where numerous countries had “recently lengthened their copyright terms to match that of Germany’s term of life of the author plus 70 years” (Litman, 2001, p. 23). Currently copyright protection in the United States is given to the creator “for a term of the author’s life plus 50 years, and has been extended to musical compositions, videotapes, and most recently to computer software” under H.R. Rep. No. 1476 and 17 U.S.C. 117 (Douvani, 1997, p. 300).

The reason that creators, artists, institutions and others push for longer copyright terms is to gain more revenue and maintain exclusivity for that work (Litman, 2001). By having the opportunity for more revenue and exclusivity it continues to allow creators to develop new works that they would not necessarily been able to have accomplished with a shorter term. However, the longer copyright terms continue to impact instructors and institutions by limiting what materials can be used in the classrooms and in distance education settings. The challenge exists for an

even balance between protecting the rights of the creator and allowing others to benefit through the use of fair use.

### *Copyright Act of 1976*

The Berne Convention of 1976 changed the way protection had been granted to now “make all works immediately copyrighted upon their creation” (Lynch, 2002, p. 137). With this change it was no longer necessary or required for a creator to “register their copyright or even to put the copyright symbol on the item—though registration and placing the symbol on works does increase the chance of success in a lawsuit” (Lynch, 2002, p. 137). This treaty was agreed to by over 170 countries and has been the “foundation of subsequent conventions” (Lynch, 2002, p. 137).

In 1976, a new law was enacted by Congress that included “the fair use doctrine, which states that certain uses of copyrighted materials are permissible without either purchasing the work or obtaining permission or a license from the copyright holder” (Gilbert, 1996, p. 134). This helped by setting up guidelines for teachers to use copyrighted materials in their classroom without fear of copyright infringement or even lawsuits. The 1976 Copyright Act was the most progressive piece of legislation passed by Congress since the enactment of the Constitution’s Copyright Clause. However, the protection granted severely limited the use of copyrighted materials in distance education while loosening up restrictions in the traditional classroom.

### *What Laws Benefit Educators And The Classroom?*

Recognizing that educational instructions have value to society, Congress and the courts have recognized that special privileges should be given to educators and facilities with respect to the use of copyrighted materials. Some of these laws include the Fair Use Doctrine, Classroom Guidelines, Digital Millennium Copyright Act and the TEACH Act. All of these have helped in the lessening of the restrictions that impact instructors, institutions and distance education. Various laws have had to be enacted to deal with the every changing field of distance education. There is no longer a typical distance education course since they “may combine any or all of the technological tools available today, including e-mail, threaded discussions, chat rooms, whiteboard programs, shared applications, streaming video or audio, video or audio files, course management infrastructure, links to websites, and interactive CD-ROMS and DVD-ROMs” (U.S. Copyright Office, 1999, p. v). As new technologies are developed and adopted into the distance education system, there will be a constant need to change or enact legislation to protect not only the owners but also the users of the copyrighted materials in distance education classrooms.

#### *Fair Use Doctrine*

Created to benefit education, the Fair Use Doctrine has become the standard of what is permissible in the classroom. One of the intended functions of the Fair Use Doctrine is to enable teachers and researchers to use materials for their professional work when it is unlikely that doing so will significantly undermine legitimate sales and related fees (Gilbert, 1996). Under the Fair Use Doctrine, those engaged in teaching, research, and scholarship are permitted to “commit technical violations of

copyright when certain criteria are met” (Douvanis, 1997, p. 300). The criteria include:

1. The purpose of the use and whether or not that use involved a profit to the user.
  2. The nature of the copyrighted works. Is it fiction or non-fiction? Is it creative?
  3. The amount of the work in relation to the entire work
- (Douvanis, 1997, p. 300-301).

Using these criteria, an instructor and the courts can determine whether the use of the copyrighted materials was for teaching or research. When the copyrighted materials are used in the classroom to demonstrate an idea, thought or process, it is more likely permissible under the Fair Use Doctrine. Secondly, the nature of the work influences whether the courts are going to be more favorable on the usage in the classroom. The courts have been more tolerant to the appropriation of non-fiction works than of fiction with the rationale that fiction is a more creative and less derivative process (Douvanis, 1997). The researcher interprets this to mean that using a quote or insight from an autobiography to share a personal experience that occurred during World War II is going to be ruled on more favorably than a story written about a invented battle in World War II.

Compliance with Fair Use prohibits copying as a substitute for purchase of printed materials, charging to the students beyond the actual copying cost, copying consumable materials such as tests or worksheets and using the same materials from term to term. The Notice of Copyright must be included on the copied materials

(Douvani, 1997). Often a sign is posted near photocopiers in the library to remind individuals not to violate the copyright laws.

With regards to instructional media, Fair Use permits the use of no more than 10% of an individual musical performance for academic purposes or the use of a single copy of a recording for aural exercises or testing. Off-air recording of television broadcasts are permitted by educators if they are used within 10 days of the broadcast. The television broadcasts may be kept for 45 days for evaluation, upon which they must be erased. These broadcasts may not be used for recreational use, only for instructional purposes. Instructors must obtain a license to transmit through a closed circuit system (Douvani, 1997). Instructional television programs may be retained for up to one year and may be transmitted through closed circuit systems for instructional purposes (Douvani, 1997). The reviewer recalls working with professors who kept the same materials on reserve term after term, year after year without ever taking notice of the fact they were violating the Fair Use Doctrine. The same material that the reviewer used for one class for a freshman history course was still there three years later when the reviewer needed to review the articles for an assignment in a different course with the same instructor.

### *Classroom Guidelines*

Additional protections were created by Congress and the courts for the classroom educators and non-profit researchers. These protections are commonly known as the Classroom Guidelines. The Classroom Guidelines are an acknowledgement of the special needs of those involved in education to use copyrighted materials. These guidelines were developed as a consented decree

between educators and publishers as a means of providing educators access to copyrighted materials in teaching settings. Using the guidelines, instructors are permitted the following for research or for preparation for a class:

- 1) A single copy of a chapter of a book, an article from a magazine, a short story, or a graph or picture from a book or magazine.
- 2) Multiple copies for classroom use if the conditions of brevity, spontaneity, and cumulative effect are not met.
- 3) Brevity is defined as a complete poem if less than 250 words; a complete article, story, or essay of less than 2500 words or an excerpt of not more than 1000 words or 10% of the work, whichever is less; one chart, drawing, or picture per magazine.
- 4) Spontaneity is defined as being done at the time of need. It is copying that is done in response to a current event or situation.
- 5) Cumulative effect means that the material is used for one course in the school, with only one article from the same author and no more than 9 instances of copying for one course. Using the same copyrighted materials term after term violates Fair Use (Douvani, 1997, p.301-302).

The Classroom Guidelines allowed many instructors to be able to use materials more freely in their classrooms and in research without fear of being



prosecuted for violations. The downside to the Classroom Guidelines and the Fair Use Doctrine was the lack of protection for distance education.

### *Digital Millennium Copyright Act*

Facing limitations from the Fair Use doctrine and the Classroom Guidelines, distance educators needed more laws to help allow them to gain permissible access to copyrighted materials to use in the classroom. With the availability of the Internet there was additional concern from copyright holders about the transfer of copyrighted materials via the Internet to multiple people who would disregard the rights of the copyright holders. One argument that was presented by Jessica Litman in her book *Digital Copyright* was that:

Copyright owners control [the fundamental copyright] not only over every time America Online uses pictures of Captain Kirk and Mr. Spock to advertise its *Star Trek* chat group, but also every time an AOL subscriber uses her computer to view the ad, and also over every computer-to-computer transmission the packets of data [sent] from AOL's web server to the user's computer. That means that, in theory, AOL, and its subscribers, and the proprietors of the University of Illinois computer and the MCI computer that the data happened to travel through on that particular day are all copyright infringements, even though they may have no way of knowing that these anonymous electrons infringe Paramount's proprietary rights. As a practical and political matter, it turned out to be a brilliant

argument in helping to persuade Congress to pass the Digital Millennium Copyright Act (Litman, 2001, p. 27).

Therefore, under the Digital Millennium Copyright Act, “Internet Service Providers (ISPs) can force users to stop trading copyrighted materials” (Vanosdol, 2003, p. 1). Since the Digital Millennium is a federal law, “copyright holders can now force ISPs to provide the names of users who break the law” (Vanosdol, 2003, p. 1). Some educators and critics consider the Digital Millennium Copyright Act (DMCA) to be the most critical piece of legislation for distance education that “is being conducted now and for the foreseeable future” (Foster, 2001, p. A30). An advantage to the DMCA is that there are broader provisions regarding “recordings of dramatic literary and musical works--such as plays, musicals, and operas--could be used for distance education” (Foster, 2001, p. A30). Laws prior to the adoption of the DMCA only protected nondramatic literary and musical works under the fair use provisions. The biggest disadvantage that critics have had to say about the DMCA is that “only accredited non-profit institutions would be able to take advantage of the copyright exemptions” that are being granted (Foster, 2001, p. A30). This results in some concern among critics as many distance education programs are offered by for-profit institutions like Kaplan College and the University of Phoenix Online. There is additional concern from educators and administrators that the DMCA may impact some traditionally non-profit universities that are becoming more for-profit with the way they are marketing their distance education programs, courses and supplemental materials.

One additional difference with the DMCA is that “it makes possible to levy fees for various uses that might otherwise be ‘fair’ or ‘free’, such as parody and quoting for news or commentary” (Vaidhyanathan, 2001, p. 175). The DMCA also erodes the first sale doctrine which is “when the copyright holder relinquishes ‘exclusive’ rights over it yet retains ‘limited’ rights, such as restricting copying or public performance” (Vaidhyanathan, 2001, p. 175). The impact to students is that this allows them to be “able to highlight sections of a book, copy portions for private, noncommercial use, resell it to someone, lend it to someone, or to tear it up, without asking permission from the copyright holder” (Vaidhyanathan, 2001, p. 175). Occasionally books used in distance education courses are out of print and the DMCA would allow students to lend books to each other, or to even to sell the books, after he or she is done with the course, to the next group of students taking the course.

### *Technology Education Copyright Harmonization Act*

The Technology Education Copyright Harmonization Act (S.487) was designed to allow distance educators to use a single copy of performance or display that were previously only permissible in the classroom setting (Business Publishers, 2001). Known as the TEACH Act, the bill:

- 1) Clarifies that the distance learning exemptions cover the temporary copies that are automatically made in the course of transmitting material over the Internet.
- 2) Extend the material exempted. While previous law permitted the transmission only of “non-dramatic literary or musical works,” it did not allow the transmission of movies, videotapes,

or the performance of plays. One example is where a children's literature instructor may routinely display illustrations from children's books in the classroom, but must get licenses for each one displayed online. The TEACH Act would allow educators to show a limited portion of dramatic literary and musical works, audiovisual works, and sound recordings.

3) Provides direction for the U.S. Copyright Office to conduct a study on the status of licensing for digital distance education programs, and convene a conference to develop guidelines for the use of copyrighted works in distance education (Business Publishers, 2001, p. 45; Zilisch, 2002, p. 16-17).

While the TEACH Act allows for some provisions in distance education, digital delivery of supplemental materials is not covered. The omission on supplemental materials can limit the way that some classes are taught and continue the reliance on the Fair Use Doctrine (Harper, 2002). Even though there are limitations that impact distance education, the TEACH Act along with the DMCA helps to make distance education's use of copyrighted materials much easier for instructors incorporating emerging technologies and materials.

### *Additional Laws Impacting Institutions and Instructors*

Additional laws have been enacted that are restricting the way that instructors work in the classroom. In theory, every time an instructor demonstrates a program to his or her class, a complete copy of the program is made within the computer, which

is in violation of copyright laws (Gilbert, 1996). This led to further definitions in the Software Piracy Act of 1980 and later in the Digital Millennium Copyright Act.

### *Software Piracy Act of 1980*

The Software Piracy Act of 1980 was adopted to restrict “the copying of a program or any of its component parts, but does not prevent a competitor from copying the ideas behind the software” (Laudon, Traver, & Laudon, 1996, p. 523). However, this does allow for an instructor in a computer engineering or programming course to show the program to the students and explain how the actual code allows for the program to work. Should a student work to improve the program and use the majority of the program as their basis, this would be in violation of the Software Piracy Act. Software piracy is when a computer program is not completely different in the style, formatting, interactions and coding from another program. Additionally, software piracy includes the downloading, copying and/or selling of illegal copies of software programs. This can occur when a software program that is licensed for one computer is loaded on to multiple computers.

### *No Electronic Theft Act of 1997*

The No Electronic Theft Act (NETA) was enacted in 1997 by Congress and is considerably different than the legislation enacted before it in that it made illegal file-swapping a federal felony. According to the bill’s sponsor, Representative Bob Goodlatte, NETA was designed to “close a loophole in our Nation’s criminal copyright law and will give law enforcement the tools it needs to bring to justice individuals who steal the products of America’s authors, musicians, software

producers and others” (Information Today, 1998, p. 1). NETA’s co-sponsor and chair on the Subcommittee on Courts and Intellectual Property, Representative Howard Coble, stated:

Counterfeiting and piracy of intellectual property -- especially computer software, compact discs, and movies -- cost the affected copyright holders roughly \$20 billion last year [1996] (Information Today, 1998, p. 1).

The development of NETA was inspired by the case of *U.S. v. LaMacchia* where a “college student had allegedly distributed thousands of copies of pirated computer software through a computer bulletin board at MIT” (Information Today, 1998, p. 1). After hearing the case, the court decided that there was “no financial gain by the defendant and therefore no crime” (Information Today, 1998, p. 1). Special interest groups from the music, movie and computer software industries pushed for the legislation and protection that NETA would give them. Under the No Electronic Theft Act:

It becomes a crime to infringe a copyright willfully either for purposes of commercial advantage or private financial gain, or by the reproduction or distribution, including by electronic means, during any 180-day period, of one or more copies or phonorecords of one or more copyrighted works, which have a total retail value of more than \$1,000. If the retail value rises above \$2,500 it becomes a felony (Information Today, 1998, p. 1-2).

The punishments vary depending on the severity of the violations and commonly include a fine but can be punishable with a prison term (Hilden, 2003). While the reviewer sees that there was a need for this legislation, she also believes that had the case been appealed that a higher court would have ruled against the student and this legislation would not have been necessary at the time of its adoption.

### *Iowa Regent University Policies Relating to Copyright*

Each regent university in Iowa has their own policy regarding the use of copyrighted materials. Typically there are guidelines relating to plagiarism and to the use of copyrighted materials over the university's network. While each Iowa Regent University has approached the development of their policies and guidelines in different ways, all three universities realize the importance of monitoring the students, faculty and the institution as a whole.

#### *Iowa State University*

At Iowa State University the policies regarding plagiarism is discussed in the academic misconduct section of the University Catalog. A copy of this catalog is given to all incoming students (freshmen and transfer) and is also available online for individuals to review. Under the Academic Regulations is a subheading on Academic Dishonesty which addresses plagiarism:

Academic dishonesty occurs when a student uses or attempts to use unauthorized information in the taking of an exam; or submits as his or her own work themes, reports, drawings, laboratory notes, or other products prepared by another person;

or knowingly assists another student in such acts or plagiarism.

Plagiarism occurs when the exact words of another writer are used without using quotation marks and indicating the source of the words; the words of another are summarized or paraphrased without giving credit that is due; and the ideas of another writer are borrowed without properly documenting their source (Iowa State University, 2003, p. 38).

The University feels that punishment is critical for those in violation “since academic dishonesty ultimately affects all students and the entire university community by degrading the value of diplomas when some are obtained dishonestly, and the lowering the grades of students working honestly” (Iowa State University, 2003, p. 39).

When an instructor needs to enforce the plagiarism policy in their classroom, an instructor is “to confront the student with the charge of dishonesty and arrange a meeting with the student to discuss the charge and to hear the student’s explanation” (Iowa State University, 2003, p. 39). Should a student admit responsibility to the charge, the instructor then informs the student of the grade on the assignment and the overall grade for the course work while also reporting the situation to the academic department head and Dean of Students (Iowa State University, 2003). If responsibility is denied then no grade is entered and a written notification is sent to the Department Head and the Dean of Students (Iowa State University, 2003). In both situations, the Office of the Dean of Students will investigate the allegation and then either make a formal charge against the student or dismiss the allegation. If a charge is made then



the student will face either an administrative hearing or a hearing before the All University Judiciary (AUJ) where a determination will be made on the situation and disciplinary sanctions will be determined (Iowa State University, 2003). Students found guilty of academic misconduct can be subject to a variety of different punishments based on the severity of the situation. These punishments range from:

- A) Disciplinary reprimand—an official written notice to the student that his/her conduct is in violation of university rules and regulations;
- B) Conduct probation—which includes a period of review and observation which the student must demonstrate the ability to comply with university rules, regulations and other requirements stipulated for the probation period;
- C) Suspension—which is deferred initially over a definite or indefinite period of observation and review and if the student is found in violation the suspension takes place immediately. The suspension may be for a specified time period (cannot be less than one semester or more than two years) or an indefinite suspension where the student is dropped indefinitely and can not be reinstated for a minimum of two years; and
- D) Expulsion—student is permanently deprived of the opportunity to continue at the University in any status (Iowa State University, 2003, p. 40).

Should the student admit during the investigation or hearing that they did commit academic misconduct, the Dean of Students Office will “counsel the student in an effort to deter any further such incidents” (Iowa State University, 2003, p. 40).

A Computer Code of Ethics is also available for online at the University’s Academic Information Technologies office’s website. The Computer Code of Ethics states that “violations of authorial integrity, including plagiarism, invasion of privacy, unauthorized access, and trade secrets and copyright violations, may be grounds for sanctions against members of the academic community” (Iowa State University Academic Information Technologies [ISUAIT], n.d., p. 1). Additionally, the “viewing or using another person’s computer files, programs, or data without authorized permission is unethical behavior and an invasion of that person’s privacy and such behavior, if used for personal gain is plagiarism” (ISUAIT, n.d., p. 1). The Computer Code of Ethics also states that “ethical standards apply even when material appears to be legally unprotected and improper use of copyrighted material may be illegal” (ISUAIT, n.d., p.1). The last statement of the Code of Computer Ethics is that “violators may also be billed for illegal use of the computer systems and may be prosecuted for statutory violations, including Chapter 716A, Computer Crime, of the Iowa Code” (ISUAIT, n.d., p. 3). Punishment for individuals in violation of the Code of Computer Ethics are set out in the Student Handbook and the faculty and staff handbooks (ISUAIT, n.d., p. 2-3 ).

### *University of Iowa*

Plagiarism is discussed in Section C in the University of Iowa’s Policies and Procedures and is available online. According to the section, all “cases of plagiarism

and cheating are reported for action to the designated person in the office of the dean of the college, through departmental channels, with a statement of the necessary facts” (University of Iowa, 2002, p. 9). The next statement of “the department and the instructor concerned may also submit recommendations in each case for appropriate disciplinary action” appears before the applicable disciplinary actions that could be put in place (University of Iowa, 2002, p. 9).

Disciplinary actions that an instructor can implement include the lowering of a student’s grade, “including the assignment of the grade of ‘F’ in the course” (University of Iowa, 2002, p. 9). A report of that action should always be sent to the dean’s office (University of Iowa, 2002). The punishment that could be implemented by the dean of the college is that the student may have disciplinary probation, assessment of additional hours for the bachelor’s degree, suspension from the college, or recommendation of expulsion from the University by the president (University of Iowa, 2002). Only in cases of “flagrant or repeated offense or for other reasons deemed sufficient by the dean of the college” is the case and records referred to the Office of the Provost for appropriate action (University of Iowa, 2002, p. 9). Otherwise, the case remains within the department.

The Acceptable Use of Information Technology Resources guidelines are located in Section L of the Policies and Regulations Affecting Students and can also be located online. The guidelines state that by “using University information technology facilities and resources, users agree to abide by all related University policies and procedures, as well as applicable federal, state, and local law and violations may result in University disciplinary action or referral to appropriate

external authorities” (University of Iowa, 2002, p. 16). By users the policy means any individual of the University community (student, staff, or faculty member) who uses the various information technology resources that are available. The policy also says that the “use of University computing resources is subject to the normal requirements of legal and ethical behavior within the University community” (University of Iowa, 2002, p. 16). While the University of Iowa does not monitor specific files on its network, the policy does inform individuals that:

Users should also be aware that their uses of University computing resources are not completely private. While the University does not routinely monitor individual usage of its computing resources, the normal operation and maintenance of the University’s computing resources require the backup of data and communication records, the logging of activity, the monitoring of general usage patterns, and other such activities that are necessary for the rendition of service. The University may also inspect files or monitor usage for a limited time when there is probable cause to believe a user has violated this policy (University of Iowa, 2002, p. 16).

The policy also expresses the importance of respecting “the work and personal expression of others” and that “violations of authorial integrity, including plagiarism, invasion of privacy, unauthorized access, and trade secret and copyright violations, may be grounds for sanctions against members of the academic community” (University of Iowa, 2002, p. 16). Those found to be in violation are reported to the

University's Chief Information Officer's (CIO) office which handles all complaints about excessive usage, copyright violations or unauthorized access. Excessive usage is considered to be "if it takes place during regularly scheduled work time, if it overburdens a network, if it results in substantial use of system capacity, or if it otherwise subjects the institution to increased operating costs" (University of Iowa, 2002, p. 27). Individuals found to be in violation of the acceptable information technology resources can face probation, suspension, or expulsion from the University.

#### *University of Northern Iowa*

The guidelines regarding plagiarism are found in the University of Northern Iowa's Policies and Procedures handbook and are also available on the university's website. In Section 3.01, Academic Ethics/Discipline, the policy states that "cheating of any kind on examinations and/or plagiarism of papers or projects is strictly prohibited" (University of Northern Iowa Faculty Senate, 1983, p. 1). The policy also states that "students are cautioned that plagiarism is defined as the process of stealing or passing off as one's own the ideas or words of another, or presenting as one's own an idea or product which is derived from an existing source" (University of Northern Iowa Faculty Senate, 1983).

The policy regarding those students found to be plagiarizing the works of others is well defined. Those found in violation of Section 3.01 will typically find that the "instructor will normally judge such work 'unacceptable' but that it should be noted that the assignment of a low or failing grade for unacceptable work is not in itself a disciplinary action" (University of Northern Iowa Faculty Senate, 1983, p. 1).

Instead as “an educational institution, the University maintains standards of ethical academic behavior, and recognizes its responsibility to enforce these standards” (University of Northern Iowa Faculty Senate, 1983, p. 2). The process is clear with the instructor assigning a lower grade and reporting in writing the action to the student, Department Head and the Office of the Provost and Vice President for Academic Affairs (University of Northern Iowa Faculty Senate, 1983). From that point the “Provost and Vice President of Academic Affairs will notify the student in writing that such an action has been taken, and will maintain a file for each students so disciplined” (University of Northern Iowa Faculty Senate, 1983, p. 2). The policy then explains the process for the student to appeal or dispute the claim made against he or she.

The University of Northern Iowa in its Rationale for Technology Resource Provision Policy states that “as with any resource, technology resources have physical and financial limits” which is the reason the University “cannot, for example, provide unlimited disk storage, Internet bandwidth, CPU capacity, video licenses, or voice mail storage” (University of Northern Iowa Information Technology Services, 2002, p. 1). The policy “does not establish the resource limits but it does give Information Technology Services (ITS) the authority, working with the Planning and Policy Committee for Information Technology (PPCIT), to establish reasonable limits for the provision and use of various limited technology resources” (University of Northern Iowa Information Technology Services, 2002, p. 1).

Additionally, Section 9.52 of the Policies and Procedures at UNI deals with Copyright-Protected Computer Materials. In the first two sentences of the policy it states:

Duplication of unauthorized use of copyright-protected materials is illegal. UNI will not protect its community members from disciplinary or legal action in defense of the rights of intellectual work or property ownership (University of Northern Iowa, 1989, p. 1).

The policy also makes it clear that “all members of the University of Northern Iowa community--students, faculty, and staff-- are expected to abide by the law and comply with UNI’s contractual obligations” (University of Northern Iowa, 1989, p. 1). This means that individuals and departments must plan for the additional costs that software will cost instead of using duplicate copies of previously purchased software. The last paragraph of the policy sums up the general beliefs of the University on the issue of illegal use of copyright materials by stating:

Respect for a person’s work and personal expression is especially critical in a computer environment because electronic information is volatile and easily reproduced. UNI will not condone actions that infringe copyrights or violate property rights, including those rights applicable to computer software. Infringing a copyright or property right is similar to theft of property or ideas (University of Northern Iowa, 1989, p. 1).

### *Use and Abuse of Copyrighted Materials*

Plagiarism and file sharing are the two major types of copyright violations that are occurring at higher education institutions. In the past plagiarism has been handled by instructors, departments or the administrators depending on the severity of the situation. Additionally, colleges and universities now face the need to deal with the complaints that are being registered against individuals for file sharing of copyrighted materials. Many of the university policies that had been enacted related mostly to plagiarism and academic dishonesty. There is a need for revisions to these policies to deal with the file sharing and peer to peer transfers that are occurring on campuses nationwide.

#### *Plagiarism*

In the past the biggest violation of copyright in education occurred when students plagiarized the works of others. Plagiarism used to occur when an individual copied text or graphics directly from books or articles but the availability of material on the Internet has made it much easier for students to plagiarize. The “quoting a report or article in an academic paper without citing the source is plagiarism and in recent years college campuses have seen ‘an explosion of copyright infringements’ occurring” (Grannis, 2002, p. 1). In a 2002 study that was conducted “by two professors at the Rochester Institute of Technology, they found that approximately 25% of the 800 college students from the various universities surveyed indicated that they sometimes or very frequently copied online text without citation” (Williamson, 2003, p. 1). Also reported in the survey was that “more than 50% of the students suspected that their peers cut and pasted text from the Internet” (Williamson, 2003, p.



1). In an *Iowa State Daily* article, English sophomore Alexis Smith stated that she thinks “Internet plagiarism is a growing trend because students think it is just public domain and you don’t think about having to cite it” (Graham, 2002, p. 1). Other times “it is human nature: temptation surpassing academic conduct and the desire to excel that leads some to take extreme measures—writing a paper only one click away on the Internet, taking an exam and peeking over a neighbor’s shoulder or writing a lab report with concocted results” (Alemozafar, 2002, p. 1).

While the Internet “sometimes gets characterized as a giant copying machine that facilitates widespread and undetectable copyright infringement, it is about fifty percent hype—the Internet facilitates wide spread copying, but it also facilitates detection of copying” (Litman, 2001, p. 25). In the same time needed to check one’s email, a student can have a plagiarized paper downloaded off the Internet and ready to submit to his or her instructor (Graham, 2002). Under the pressure of deadlines, students are able to access sites like SchoolSucks.com and TermPapersRUS.com to find a wide range of topics to download and use (Graham, 2002; Iacocca, 2002). TermPapersRUS.com describes itself as “a research aid for students” by having students “use one of our papers to lessen your stress level and if it isn’t in our database of more than 25,000 sample term papers, essays and research studies, then we will write one for you” (Iacocca, 2002, p. 1). A new aspect of the Internet paper mills is that while they provided plagiarists with prewritten papers, these same companies are also turning around and providing instructors with resources to catch the student purchasers (Bledsoe, 2002).

Locally the impact of plagiarism gained national attention when at the University of Iowa in 2002 the national news picked up the story about a “former law student who was forced to write a letter of apology for publishing material lifted from the Fordham Urban Law Journal” (Mueller, 2002, p. 1). In an August 2002 study from the University of Iowa’s Office of the Ombudsperson it was reported that “twenty-six (26) cases of plagiarism were reported in one UI course alone” (Mueller, 2002, p. 1).

In the past, large amounts of work went without citation or credit to the author. Now with the use of the Internet, instructors are able to search online to determine whether a student has borrowed work from an entire work or a portion. In October, 2002 the *Daily Iowan*, campus newspaper at the University of Iowa, reported that twenty University of Iowa professors were testing out a new online tool that detects plagiarism in term papers (Mueller, 2002). When registered with Turnitin.com, students submit their assignments through the website, which then compares it to other students’ papers and information on the web by “highlighting and underlining material that is found in its extensive database” (Mueller, 2002, p. 1). After the website has reviewed the paper, typically within 24 hours (Early, 2002), a report is sent to an instructor “with a list of links, each leading directly to the material in question, which is color-coded to indicate the severity of the problem” (Mueller, 2002, p. 1). According to Turnitin.com’s official website, they are helping in “detering plagiarism for nearly 5 million students and educators worldwide” (iParadigms, 2003b, p. 1). Turnitin.com was founded in 1996 by University of California—Berkley graduate student, John Barrie and is comprised of an eclectic

mixture of former teachers, doctoral students, designers, computer scientists and business professionals to detect and deter plagiarism (Iacocca, 2002). Only recently has Turnitin.com become one of the major plagiarism detection sites utilized by higher education institutions.

According to Joan Weinburg, Academic Affairs Manager for Planetary Sciences at the University of Arizona, the use of plagiarism detection sites “is not a surefire way to determine plagiarism but merely another tool, diligence is always required” (Bledsoe, 2002, p. 1). The use of Turnitin.com at the University of Notre Dame raised questions about the “direct submission of student works without any prior indication of plagiarism” (Early, 2002, p. 1). The University of Notre Dame’s Honor Code Committee recommended that “a student’s work be submitted to Turnitin.com only if the instructor of the course believes there are reasonable grounds for suspecting academic dishonesty on the part of the student” (Early, 2002, p. 1). Students were “initially leery when they were informed about Turnitin.com, but some students feel that the plagiarism service is beneficial because it ensures that their peers will be more honest” (Early, 2002, p. 1). Maura Kelly, a student member of Notre Dame’s University Academic Honor Code Committee, stated that the idea “of Turnitin.com undermines the whole idea of honor” at Notre Dame (Early, 2002, p. 1). However plagiarism of online sources continues and having various options to assist instructors in maintaining more honor among the students helps to reduce the number of occurrences. .

The University of Iowa is not the only university to seek the assistance of Turnitin.com. Others have tested the service and selected other options. Cornell

University “abandoned its subscription, citing legal problems caused by the company’s policy on keeping papers” (Williamson, 2003, p. 1). Instead faculty is encouraged to use “search engines such as google.com, which mostly have strong anti-plagiarism features” (Williamson, 2003, p. 1). Should the University of Iowa be impressed with the results produced by Turnitin.com, the entire university could be signed up at the cost of \$12,000.00 per year (Mueller, 2003). University of Arizona English instructor Jean Goodrich feels departments are buying plagiarism software because a possibility in the future exists where online plagiarism will be a problem but feels that the problem isn’t a real problem, since the way instructors create assignments can “limit using just a generic paper” (Bledsoe, 2002, p. 1).

While an online method to search for plagiarism might seem a bit extreme at the university level, other options have included students making an “honor” or “pledge” on all assignments for class. Instructors require that students write the word “pledge” on their assignments, tests or quizzes to show their academic honesty. As stated on all syllabi distributed by Dr. James Hutter, Associate Professor of Political Science at Iowa State University,

ACADEMIC HONESTY: All work for credit must bear the single word "*Pledge*" and the student's name; attendance reports also are included in the academic honesty requirement. The pledge is short for "I am aware that ISU requires all work submitted for a grade to be the sole work of the student submitting it. I *pledge* that I have neither given or received any unauthorized assistance on this assignment." Unpledged work

will be returned ungraded. Observing violations of this policy without reporting them promptly is "unauthorized assistance" included in the meaning of the *pledge*. Academic dishonesty will result in an "F" in the course and has other possible sanctions (see the ISU Handbook) (Hutter, 2002, p.1).

As Iowa State University English professor Neil Nakadate stated “plagiarism is noticeable if the work submitted is drastically different in quality from the students other class writings” (Graham, 2002, p. 1). Nakadate says “it is rare, particularly in students taking 100-level courses, to find very sophisticated writing” (Graham, 2002, p. 1). This means that should an instructor notice that a student’s writing has drastically improved to a level that would not be typical during the course of one semester and was beyond the scope of the material that was being used in class or as supplemental reading that the instructor should be investigating whether the work is truly that of the student who submitted it or if there was assistance from non-cited materials.

Typically universities have left the discussion of plagiarism up to the faculty to discuss with students “at the beginning of each semester in every class, making clear their expectations regarding academic misconduct” (Mueller, 2003, p. 1). Laurette Beeson, a judicial adviser at Stanford University’s Office of Judicial Affairs, stated that “one improvement to the current [academic] system is having the faculty talk to their classes about the honor code” (Alemozafar, 2002, p. 1). At Cornell University in Ithaca, New York, “during freshman orientation, administrators also introduce the Code of Academic Integrity, and peer advisors help to reinforce those

expectations” (Williamson, 2003, p. 1). University of California—Los Angeles Astronomy professor Mark Morris dedicates an entire lecture on clarifying the meaning of plagiarism to his students because he believes “students use the Internet irresponsibly because of the naïve impression that the Internet is not the same as books” (Iacocca, 2002, p. 1). This naïve impression can come from the fact that almost anything imaginable is available on the Internet and very little contains a copyright notice or credit to the works of others.

Mark Morris further stated “plagiarism in my classes used to be depressingly common; but, maybe because we are trying to hard at the beginning, we don’t see it so much anymore” (Iacocca, 2002). In a study conducted by Donald L. McCabe titled *Faculty Responses to Academic Dishonesty: The Influence of Honor Codes* found that 55% of the faculty “would not be willing to devote any real effort to documenting suspected incidents of student cheating” (iParadigms, 2003a, p. 1). This is probably reinforced by the thought that “too few universities are willing to backup their professors when they catch students cheating and schools are simply not willing to expend the effort required to get to the bottom of cheating” as stated by the National Center for Policy Analysis (iParadigms, 2003a, p. 2). Additionally, as the number of repeated cases rise at universities, there “is no actual proof that there are increasing amounts of violations—however it shows that departments have implemented measures to catch offenders” (Alemozafar, 2002, p. 1).

#### *File Sharing or Peer-to-Peer Transfers*

Every day on college campuses nationwide an illegal activity is occurring at a rampant pace that controlling it has become a struggle among students, administration

and the recording industry. The downloading or swapping of copyrighted materials (e.g., software, music, and movies) has become such commonplace among university students that many “don’t even think twice about it” (Almog, 2003, p. 1). Frequently, many administrators, faculty members and students “are neither conscious of nor knowledgeable” of the legal requirements and penalties associated with using computer software and other multimedia elements (Gilbert, 1996, p. 134). Having students, faculty, or staff caught illegally copying software can undermine an institution’s apparent commitment to both intellectual integrity and the right of authors, as well as results in substantial fines and inconveniences (Gilbert, 1996, 134). Representatives of the artists and companies whose works are pirated say that the “practice costs the national economy billions of dollars and thousands of jobs each year” (Mangan, 2002, p. 1). Part of the way to compensate for lost revenue is to pursue individuals who are violating copyright laws through illegal downloading and file sharing.

Students use programs such as Napster, Kazaa, iMesh, MP3.com, and Morpheous to download various movies and music. According to Daphne Clark, an entertainment attorney and President of DC Entertainment Law, many downloaded copies of movies and music are “likely in violation of the Digital Millennium Copyright Act of 1998” (Almog, 2003, p. 1). The ability to transfer large amounts of data over the Internet to individuals either a computer away or halfway around the globe, peer-to-peer transfers are becoming the most common method for students and others to transfer copyrighted materials to each other. A peer-to-peer transfer (p2p)

has become the easiest, most effective and least costly method for individuals to find the materials that they need or want on the Internet.

Content industry leaders, Recording Industry Association of America (RIAA) and the Motion Picture Association of America (MPAA), have fought a battle against individuals who violate the copyright of their members. While students are the most common violators, it was not the students that RIAA or MPAA are going after for various violations. As Daphne Clark stated in an interview, “students do not have deep pockets, so (record labels) would go after the file sharing companies” (Almog, 2003, p. 1). In the past, RIAA “sued companies that that enabled users to share copyrighted files. File sharing sites Napster and MP3.com were both shut down due to these lawsuits, however, sites such as Kazaa and Morpheus quickly replaced Napsters as an easy way to share files” (Grannis, 2002, p. 1). Content industry organizations assert that “users who upload and download copyright materials are in violation of federal copyright law” (Almog, 2003, p. 1). RIAA and MPAA’s goal in contacting file sharing companies is to restrict these companies and their users from trading files illegally.

In a 2003 study conducted by Ispos-Reid/TEMPO on the digital music consumers’ activities found that “almost one-fifth of the U.S. population over 12 has downloaded music in the last 30 days and of that number 21% feel that free downloading hurts artists and only 9% feel that downloading a file is wrong” (Menta, 2003, p. 1). In the study of 1,112 individuals age 12 and over nationwide, Ispos-Reid found the following:



- (1) Nearly half (48%) of Americans between 12-17 downloaded song files in the last month, up from 44% in April 2002. 42% of those between 18-24 have done the same, up from 36% since last year.
- (2) US downloaders feel that that file trading activities are benign. Only 9% thought that file trading was wrong. Only 21% feel that peer to peer trading hurts artists.
- (3) Only 16% of downloaders feel that the record industry is justified in shutting down file trading services like Napster and Audio Galaxy. And finally, 39% feel that making copies of music to give to friends is okay (Ispos Public Affairs, 2003, p. 1).

With individuals having these types of beliefs, the amount of materials being illegally traded over university servers will continue to grow until the problem is restrained. TEMPO Director Matt Kleinschmit stated that “with recent efforts underway to redefine the role of copyright and fair use in the digital age, this data clearly shows that current US downloaders are interpreting both the motivations and legality of their actions on their own terms” (Menta, 2003, p. 2). This belief suggests that “the copyright enforcement efforts are unfortunately being misinterpreted by these consumers and additional education and awareness on the importance of intellectual property rights in this new era of content distribution may be necessary” (Menta, 2003, p. 2). According to Kleinschmit, the “past month activity is often an indication of repetitive behavior and thus this particular study provides an idea of the

proportion of the US population that is regularly downloading files off the Internet” (Ispos Public Affairs, 2003, p. 2). The downloading includes anything from the sampling of music or video clips to peer to peer file sharing. (Ispos Public Affairs, 2003). With the results from TEMPO’s study, it is obvious there is an attitude among those under the age of 24 who feel that this is not illegal. These are the individuals whose file sharing is impacting the ability of individuals to use computer resources on campus. The target range of the TEMPO study was students who are in high school and college, which have in the past been the largest group of violators of copyright law. The TEMPO data shows that individuals between 12 and 24 years old are unfamiliar with the fact that the file sharing is illegal or with the consequences of their actions. These individuals either do not care about the consequences or believe that they will not be caught.

A new target has appeared on the horizon for content industry organizations to seek enforcement and punishment of copyright violators. The new target are universities where copyright laws are violated daily by students and employees who are either oblivious to the laws or simply choose to ignore copyright protection of various materials. According to Connie Sadler, Director of Information Technology Security for Computing and Information Services at Brown University, “when copyright laws are violated, this kind of behavior exposes the entire university to liability issues” (Almog, 2003, p. 1). According to Jonathan Zuck, President of the Association for Competitive Technology, software piracy is “a growing liability that universities can ill afford and over time will affect their ability to provide Internet access for legitimate education purposes” (Mangan, 2002, p. 1). Through the use of

high-speed computer networks, students are able to download, store, upload and exchange large audio and video files and thus swapping files (Hilden, 2003). While students may face “penalties for swapping copyrighted files,” universities can also face penalties “if they allow their networks to be used for such activities” (Hilden, 2003, p. 1). File swapping of copyrighted materials has resulted in RIAA and MPAA sending “letters to universities asking them to take on the responsibility of preventing file sharing” (Wallace, 2002, p. 1). The letter campaign is taking place using two methods—the typical postal service delivery and through electronic mail or e-mail.

The letter campaign started after January 2003 when a federal judge “ordered Verizon Online to give RIAA the name of one of its subscribers who had downloaded more than 600 songs in one day” (Rivero, 2003, p. 1). RIAA asserted under the Digital Millennium Copyright Act of 1998, that Internet Service Providers (ISPs) are required to “remove any unlicensed product from their server” and that “Verizon had failed to comply with RIAA’s subpoena, citing respect for customer privacy” (Rivero, 2003, p. 1). RIAA and MPAA are not the only groups sending letters out to help make colleges more aware of the copyright violations. The problem of file swapping of copyrighted materials has become so out of control that six major higher education organizations wrote to the presidents of all American colleges urging them to take action in ending the illegal distribution of copyrighted materials through college computer networks (Kiernan, 2002; Mangan, 2002).

The letter was signed by the presidents of the American Association of Community Colleges, the American Association of State Colleges and Universities, the American Council on Education, the Association of American Universities, the

university more money and implementing simple restrictions, on bandwidth or activities, will allow better use technology resources.

Increased notices have begun to appear more and more on campuses as content industry began employing companies to search for violators. Many individual copyright holders are now “hiring companies to search the web for illegal files and then report their finding to the university” (Grannis, 2002, p. 1). The use of copyright violation seeking companies to scan the activity of students on chat boards, discussion groups and other methods allows for RIAA and MPAA to find individuals who are violating copyright laws and take action against the violators. Students “who continue to download copyrighted material illegally may be open for fines for up to \$300,000” (Vanosdol, 2003, p. 1). According to Indiana University counsel Beth Cate:

RIAA and MPAA have people constantly monitoring the Internet for copyright infringement. When they observe someone trading copyrighted material on IU's servers, they notify IU of the violation. Violators are identified by number, not by name (Vanosdol, 2003, p. 1).

In a November 2002 article, Wake Forest University Vice President and Chief Information Officer, Jay Dominick reported “the university was receiving approximately one complaint each week from a copyright holder about a student breaking copyright laws” (Grannis, 2002, p. 1). When MPAA identifies a campus computer that shares files extensively, a notice is sent from MPAA to notify the University of a suspected computer or user and MPAA recommends various actions

that could be implemented (Wallace, 2002). The University then conducts follow-up research on these flagged computers. Many times individuals accused in a complaint have had his or her account hacked into and the account identification was misused to transmit information that triggered the notice (Wallace, 2002). At the University of Iowa, the Chief Information Officer's (CIO) office is notified by RIAA and MPAA of potential copyright violators.

The University of Iowa CIO's office investigates the alleged violation and requires the student to remove all materials which are in violation of university policy and copyright law before their Internet access is restored. Occasionally, like at Wake Forest, the University of Iowa finds that student accounts were used by other individuals to transmit information without the student's knowledge. This has become a problem at many other campuses nationwide as more students go online but do not use software or equipment, such as a firewall, to maintain the security of the student computer or account from individuals who would use the computer or account for illegal or unethical purposes.

Universities do not look for particular files, but as University of Virginia spokeswoman Louise Dudley said "[universities] try to find out what is making the network slow" (Wallace, 2002, p. 1). According to Robert E. Reynolds, University of Virginia Information Technology Center Vice President and Chief Information Officer, online services like Morpheus and Kazaa "are frequently used by students and take up an awful lot of bandwidth on the network" (Wallace, 2002, p. 1). At the University of Texas—Austin, the University "respects the privacy rights of students by only monitoring the volume, not the content of online file transfers, unless there

are ‘compelling reasons’ to do otherwise (Lim, 2002). FindLaw Columnist and former First Amendment lawyer, Julie Hilden argues volume monitoring “could prevent students must download large files for class, or for their own study and such a limit would be like a limit on the number of books student can take out from the library which have the effect of impeding education” (Hilden, 2003, p. 2).

Technology officers have stated that this is an interesting argument, but do not feel that the amount of large files that would be downloaded for a class would be enough to set off a volume monitoring system that any university would have in place.

Additionally, any student whose downloading activity would cause concern, most likely would not be downloading files for class but downloading instead for personal use.

To warn Indiana University students of copyright infringement, Incident Response Coordinator Tom Jagatic sent students an email that “warned users that their identities can be obtained by RIAA and the MPAA under the No Electronic Theft Act of 1997” (Vanosdol, 2003, p. 1). However, universities like Indiana University “do not monitor for copyright infringement out of respect for privacy and academic freedom” (Vanosdol, 2003, p. 1). While Indiana University is not alone in supporting the right of privacy and academic freedom, other privacy groups are vocalizing their support for limited to zero network monitoring. The Electronic Privacy Information Center, a privacy advocates’ organization, cautioned that “network monitoring could impact privacy and academic freedom” since the “surveillance of an individual’s Internet communications implicates important rights and raises questions about the appropriate role of higher education institutions in

policing private behavior” (Lim, 2002, p. 1). Radio-television-film lecturer Patrick Burkart commented that “privacy is essential in promoting the freedom of academic research” (Lim, 2002, p. 1). Burkart stated further that:

To monitor for copyright violations you have to invasively monitor network traffic and look at the actual content of messages that are going through, which is unacceptable under any circumstances, especially the University, where freedom of expression and privacy go hand-in-hand in promoting academic research and scholarship (Lim, 2002, p. 1).

As an increase in the number of RIAA and MPAA copyright violation complaints, relating to peer to peer file transfers, were filed with Syracuse University, students are finding that the university has responded by stepping up enforcement and shutting down network connections (Rivero, 2003). Initially Syracuse sent a letter to all ResNET subscribers on campus informing them about the increased number of complaints that had been received in a 24-hour period. As a result, 16 students “had their network ports closed for making illegal materials like movies and music available online” (Rivero, 2003, p. 1). Unlike most universities nationwide, Syracuse’s Computing Media Services has stated that “should RIAA request information about a particular ResNet subscriber, the university will legally comply” (Rivero, 2003, p. 1). The reason that the university gives, according to Debbie Nosky of Syracuse’s CMS is that there has been a “direct correlation between the time Internet connection speed slows down in the university, and the time when peer to peer network activity is at its busiest, after 6 p.m.” (Rivero, 2003, p. 1).

According to Ohio-Wesleyan senior, Andrew Roynestad when “Napster was big, it was blocked on weekdays since students and administration were using the same server, so file sharing was affecting teachers by slowing down their computers during the work day” (Waleryszak, 2002, p. 1). Boston University’s Executive Director of Information Technology, Michael Krugman, stated:

The network is built to provide for 11,000 servers [users] but not intended to support the tens of thousands of non-BU servers that are accessing files. The network has trouble compensating for this demand which increases the cost of the network and eventually affects tuition prices. Contrary to popular belief, file sharing is by no means free (Waleryszak, 2002, p. 1).

While at Boston University there is no limitation on the size of files that students can receive nor is there a cap on the amount of bandwidth that students can use (Waleryszak, 2002). Excessive bandwidth usage is one reason that universities like the University of Iowa have begun to regulate the amount of usage by students.

In September 2002, University of Iowa freshman, Jeff Nylen, developed a “new and faster way to download and shares files with the 5,600 UI students living in the residence halls” when he created HawkSearch.kick-ass.net which would allow “dorm residents to search, share, and download files from inside the university’s computer network” (Wagner, 2003, p. 1). On February 3, 2003 an article about HawkSearch was published in *The Daily Iowan* describing much about what the site offered those in the residence halls. Nylen’s site had “approximately 1,500 different



computers logged onto the site since its inception, and around 30,000 visitors hit the site every day” (Wagner, 2003, p.1). Full copies of movies, software and music were available for students to download and according to UI freshman Bae Jun he was “not bothered by sharing and downloading copyrighted material on HawkSearch because the practice has become commonplace since ‘it’s so much faster and more like transferring files than downloading them’” (Wagner, 2003, p. 1). Nylen stated to the reporter “that there are no restrictions or legal complications to sharing files, including copyrighted movie and song files, over an internal network like the university’s” (Wagner, 2003, p. 1).

Users of HawkSearch were able to “download a 700-megabyte file, the size of a full-length file, in 12-15 minutes instead of the two to 12 hours it takes to download the same file on programs that use public lines and smaller bandwidths, such as KaZaa or Limewire” (Wagner, 2003, p. 1). According to Marc Franke, Director of Campus Services for Information Technology Services (ITS), the reason for the high speed transfers is the fiber optic cables that were installed between UI buildings which allows for higher bandwidth than conventional telephone lines (Wagner, 2003).

The following day another article appeared in *The Daily Iowan* explaining how the University had shut down the site not because of the article but because as a result of complaint against HawkSearch. Jane Drews, ITS Security Officer with the Chief Information Officer’s office, explained that “a party within the university had filed a complaint about the site and the connection was shut down on January 31” days before the article had appeared in *The Daily Iowan* (Shuppy, 2003, p. 1).

Reasons for shutting down the site included violations of the ResNet Acceptable Use

Policy and illegal sharing of copyrighted materials (Shuppy, 2003). According to Drews, it is “[the University of Iowa’s] responsibility to take action when illegal activity comes to our attention” and that the investigation was ongoing to determine the extent of the situation and what consequences Nylen might face from the University (Shuppy, 2003, p. 1).

After both articles were published numerous letters to the editor were written in support of Nylen and his actions. *The Daily Iowan* opinion editors supported Nylen in their February 3, 2003 editorial “that expelling Nylen will not serve as any example or deterrent; it will, considering his talent in setting up the service, will only cut short what promises to be a bright and colorful career at the UI” (Daily Iowan, 2003, p. 4). In their minds the actions of Nylen and HawkSearch were no different than those of other file sharing programs and that shutting HawkSearch down “will not make a dent in the practice on campus” (Daily Iowan, 2003, p. 4). Additional justification of HawkSearch according the editorial board at *The Daily Iowan* is that “Nylen did not profit from it any way; he ran it simply as a service to his peers” (Daily Iowan, 2003, p. 4).

In June 2003, students at Iowa State were warned of possible consequences for file sharing. During the 2002-2003 academic year, Iowa State “was contacted approximately 300 times, up from previous years” about students sharing files illegally (Peto, 2003, p. 1). According to Michael Bowman, assistant director of Academic Information Technologies at Iowa State, the notices “the year before numbered less than 100, and in general I don’t think we were receiving notices before that” (Peto, 2003, p. 1). Interim assistant Dean of Students Bethany Schuttinga says

that “the university is concerned for students in light of recent lawsuits and that you’ll continue to see more of it especially as case are won” (Peto, 2003, p. 1).

Individuals are taking upon themselves to reduce their own liability. Vic Vijayakumas, current administrator for StrangeSearch, a search engine on the Iowa State’s network, “is trying to change the system so that it becomes an opt-in indexing system where file sharers are putting the legal responsibility on themselves by saying ‘index me’ and relinquishing the search engine of all legal responsibilities” (Peto, 2003, p. 1). Computer science senior Bryan Nguyen feels that while people won’t stop sharing files but “if they stop sharing publicly, they’ll share files only within a small group” (Peto, 2003, p. 1). Nguyen’s statement supports an attitude that is becoming prevalent among students that they are not doing anything illegal and that there is a need by Internet Service Providers (ISPs) and search engines to reduce their legal liability.

### *Limitations for Distance Education Instructors and Students*

Most colleges and universities adhere to the same copyright guidelines in distance education as they follow in the traditional classroom setting. However, a simple copyright infringement that may have gone unnoticed in a traditional classroom may be easily detected in distance learning programs, which by their nature have more exposure than regular class work (Harney & Richards, 1996). With an estimated 7 million Americans taking part in some form of distance education, more questions are being raised than answered with regards to copyright (Harney & Richards, 1996).

New problems emerge as educators make the transition from using only print media in teaching to also using computer software and seeking to develop their own instructional multimedia materials (e.g., PowerPoint presentations, data CDs or DVDs). For instance, finding out who “owns” all the necessary rights to even a small piece of a movie is far more complicated than finding out who holds the single copyright for an entire book (Gilbert, 1996, p.134). The spontaneity of using a video or software does not seem to be protected under existing copyright laws so there needs to be a change in the way that they can be used in the distance education environment. However, there will be an extended period of time where educators struggle to find out the identity of copyright holders as well as obtaining permission for usage of copyrighted materials in the instructional setting.

Rented videotapes present a special problem in distance education because these videotapes may not be shown for entertainment purposes and may not be used except for face-to-face instruction without violating current copyright laws (Douvani, 1997; Picciano, 2002). Any attempt to profit from selling or showing copyrighted materials, even for educational purposes, is generally prohibited (Picciano, 2002). With the large number of distance education courses that are appearing, this prohibition could raise a debate on whether there is a profit being gained from showing these copyrighted materials.

### *Face to Face Teaching*

Two conditions that need to be present in order not to violate copyright law, the Fair Use Doctrine or the Classroom Guidelines are copyrighted materials are used “in the course of face-to-face teaching activities” and that the instruction takes place

“in a classroom or other similar place devoted to instruction” (Douvani, 1997, p. 302). This disagreement occurs on whether distance learning instruction meets the letter, if not the spirit of the law if either of these conditions exists (Douvani, 1997). Many courses require individuals to meet online to participate in electronic discussions for the majority of the course while also having to meet once a week in a teleconferencing session. Some educators and administrators believe this meets the face-to-face requirement. However there is concern from the educators and administration over web-based courses meeting the face-to-face requirement especially since distance education programs are relying heavily on web-based course delivery.

### *Is Fair Use Really Fair?*

One of the key determinants of fair use of print works was the duplication of only a small portion of a text, but when a professor duplicates a piece of work and places it on their website the usage changes. Since professors are displaying items on their websites as part of the supplemental materials for students, the university and the instructor are at risk of an infringement lawsuit from the copyright holder.

When an item is used repeatedly by an instructor for numerous years, there becomes an abuse of the good faith that the Fair Use Doctrine puts on individuals when they use materials. This abuse by instructors provides students and university a disservice by showing disrespect with regards to copyright laws that are in place to benefit instructors. Instructors may realize that materials being using under the Fair Use Doctrine may require the instructor to obtain long term permission for use of the materials. This long term permission may require that the instructor sign a release that

they will not be using the material for personal gains and only for educational purposes.

### *Security of Copyrighted Materials*

In order to protect copyrighted materials that are being utilized in the classroom, there is a need for the instructors and university administrators to restrict and enforce security of the copyrighted works. Technology companies and content providers “are working to develop commercially viable protection technologies, and industries are collaborating to develop standards” (U.S. Copyright Office, 1999, p. v). In the U.S. Copyright Office’s Report on Copyright and Digital Distance Education they stated that “educational organizations can, and commonly do, limit access to students enrolled in a particular class or institution through several different methods used separately or in combination: password protection, firewalls, screening for IP addresses or domain names, hardware connections, encryption, or using CD-ROMs as a delivery mechanism” (U.S. Copyright Office, 1999, p. v). The concern is what happens once a student gains access to the system and downloads the copyrighted materials. Many copyright holders are afraid that the students will forward the materials on to their friends who will continue to share the information without ever seeking permission from the copyright holder.

Instructors like Professor Louis Curran of Worcester Polytechnic Institute's Department of Music faced the dilemma of having only two turntables for hundreds of students to listen to 1,700 recordings for his course (Willdorf, 2000). Like many institutions facing budget dilemmas, instructors are forced to become creative not only with financial resources but also with available equipment and technology all the

while being open minded to new possibilities. As a result, Professor Curran developed the idea of placing the recordings online for the students, but met with the university's legal counsel before proceeding (Willdorf, 2000). Curran, with the assistance of senior Thomas Hall, developed a site that was "password protected and accessible for students who are registered for that term" (Willdorf, 2000, p. A53).

With the availability of the sound clips, students are able to complete their assignments whenever and wherever with Professor Curran being able to track which students have listened to clips and when. As Curran is quoted: "It makes it much easier to be assured that the listening is happening, and we can check through the program and see who's naughty and who's nice" (Willdorf, 2000, p. A53).

At the end of the quarter, all of the material is removed and stored on a server, from which it can be "retrieved the next time the course is offered" (Willdorf, 2000, p. A53). While Curran admits "students could send the files to friends via e-mail" he and Hall encourage the students to delete the excerpts after listening (Willdorf, 2000, p. A53). "Budget limitations prevented Worcester from using more-expensive streaming technology, which permits the steady, live transmission of data that are not downloaded to a user's desktop" (Willdorf, 2000, p. A53). Implementing streaming technology as a means for delivering copyrighted materials will cost the colleges and departments much more in software to prevent items from being downloaded directly on to student computers. Additional costs will come from the training of faculty and staff on how to use the software, creating files in the proper format and purchasing extra server space to maintain and secure the files. Columbia University, faced with a similar situation, placed supplementary recordings online for students taking Music

Humanities to listen to (Willdorf, 2000). Students are only able to use computers on the campus network or are dialed into the university's modem pool to gain access to the course web site (Willdorf, 2000).

In order to meet the guidelines for fair use it has been suggested by Lenore Coral, the music librarian at Cornell University, that limiting the selections' duration makes it difficult to teach effectively (Willdorf, 2000). Coral argues that the copyright laws are “no longer appropriate in a music-education context since instructors studying a musical work need to listen to the whole work” not just a portion of the piece. (Willdorf, 2000, p. A53). As a result, Cornell University has decided to digitalize the music collection and have streaming audio which will not be downloaded to student computers since access will only be through the computers within the music department (Willdorf, 2000). Cornell's solution is just one of the few that were suggested by the U.S. Copyright Office's Report on Copyright and Digital Distance Education.

When limiting access to just students enrolled in a class or at an institution that U.S. Copyright office suggested using several different methods either separately or in combination. Some of the commonly used methods include password protection, firewalls, IP addresses/domain names, hardware connections, encryption and physical control (U.S. Copyright Office, 1999). Suggested with password protection was that “each student be issued a single password, which opens access only to a course for which the student has registered, or the student can be provided a different password for each class” (U.S. Copyright Office, 1999, p. 59). An additional recommendation was that these passwords expire at “a predetermined time-- the termination of the



class, the semester, the school year, or the student's enrollment in the institution" (U.S. Copyright Office, 1999, p. 59). Distance education programs at Iowa State University, University of Iowa and University of Northern Iowa are utilizing a password method when using the WebCT course software system. WebCT and Blackboard systems meets the suggestions of the U.S. Copyright Office by being password protected, open only to those students enrolled in the program and terminates access at the end of the student's enrollment at the institution.

The U.S. Copyright Office also suggested that the controlling of downstream uses will help in protecting copyrighted works. Ideas for controlling downstream uses include the use of "digital containers or proprietary viewers" where the digital file can only be "opened by the software that reads and abides by the usage rules contained in the file" (U.S. Copyright Office, 1999, p. 62). Programs that meet this need and that are commonly used in distance education and in higher education include Adobe Acrobat Reader, Liquid Audio, and InterTrust. There is the introduction of streaming formats and low resolution data that will assist in protecting copyrighted material that would be distributed to students in distance education courses. Through the use of streaming technology formats video and audio are viewed or heard on the machine without a copy of the whole work being created on the machine. Low resolution data can also reduce downstream use by providing "the users with a less than full complement of digital data, thereby creating a copy of lower quality" (U.S. Copyright Office, 1999, p. 65). The final solution suggested by the U.S. Copyright Office was the creation and implementation of digital watermarks in the embedded file. While a "digital watermark does not hinder copying of a digital file, the watermark will be

present in the copy (or any subsequent copy made from that copy) and while it is possible to remove the watermarks it becomes a more than trivial effort and inconvenience as some digital watermarks are harder to remove than others” (U.S. Copyright Office, 1999, p. 66). These suggestions by the U.S. Copyright Office are intended to help distance education programs and institutions of higher learning to limit the illegal downloading of materials that is occurring on their campuses. The U.S. Copyright Office stated “developments in technologies for protecting content are harder to predict and possibly in the near future it will be technically possible to protect works against both unauthorized access and dissemination with a high degree of effectiveness” (U.S. Copyright Office, 1999, p. 67).

#### *Who Really Owns Distance Education Courses and The Related Materials?*

Two aspects of copyright--“fair use” and “works for hire”--complicate the ownership of distance education courses. Under fair use, the development of the course belongs to the instructor/designer but using the works for hire theory the university has a contract with these individuals for them to produce the materials and course as part of their employment and therefore the materials belong to the university. The impact of copyright ownership is more of an issue through works for hire in relation to distance education courses.

*Works-for-hire.* The law acknowledges that certain intellectual property (includes, but not limited to, text, graphs, diagrams, visuals, audio and software) created by an employee on company time can be works for hire (Douvani, 2000). If the work is created in the normal course of employment, the ownership of the intellectual property may lie with the educational institution (Douvani, 2000). In

order to avoid problems over issues of ownership, the administration and the instructor should either designate the material "work for hire" or assign the rights to the institution or specify that the materials are the property of the instructor. The argument is being made that while developing a policy regarding ownership of the copyright, the guidelines set in other industry contracts might not incorporate the language that is used in higher education (Carnevale & Young, 1999).

As more individuals take distance education course, there is a growing need for more instructors to develop various courses for the growing enrollment. When faculty members develop courses "entirely online [they] assign their copyright to the school, which pays the professor a fee for creating the course and gives the faculty member 30% of any fees the school receives for licensing the course to other institutions" (Reid, 2001, p. 14). Faculty members receive separate payment for teaching an online course (Reid, 2001). One possible suggestion to the situation is:

To obtain releases from all parties involved in the class. This would include students and other participants as well as lecturers. All on camera participants should be required to assign all rights in the program to the educational institution. This would include the use of their name, likeness, and contributions and will protect the school from litigation based on invasion of privacy and copyright infringement. Also, the purchase of a site license to show videos or use computer software can alleviate many of these problems. The license allows the school unlimited use of videos and software covered

by the license. The prices of these licenses vary but can be very cost effective for institutions that use the media extensively (Douvani, 2000, p. 301).

One suggestion that has been made by distance education instructors is to have colleges ask “distance education students to sign release forms giving the institution the right to use the students’ images or work in future courses” (Young, 2000, p. A49).

Concern has developed among instructors who fear the direction online courses will take with regards to their tenured status. Rochelle Dreyfuss, a New York University Law Professor and Director of NYU’s Engelberg Center on Innovation Law and Policy has stated: “the concern among faculty members at some universities is that once their courses go online the school won't need you anymore; you will replace yourself” (Singer, 2001, p. 28). An example that follows Dreyfuss’s statement is the experience of Randy Accetta with a televised course he developed for Pima Community College in Tucson, Arizona. Almost a decade ago, Accetta designed a writing course that he no longer teaches at Pima Community College but is still used by the college year after year (Carnevale & Young, 1999). Pima instead airs the videotape and has “another instructor each semester as the teacher of record who deals with students and grades assignments” (Carnevale & Young, 1999, p. A45).

Lecture notes, course outlines and exams are owned by the instructor who can use the development of the online courses as a way of developing their educational portfolios (Reid, 2001). Copyright law provides that owners of intellectual property (including, but not limited to, text, graphs, diagrams, visuals, audio and software)

may make derivative use of their original work (Douvanis, 2000). As such, a lecturer may argue that the entire program or broadcast is a derivative of his or her lecture notes, which are an original work product and, therefore, it can be argued that any multiple or subsequent showing of the class violates his or her copyright (Douvanis, 2000).

Using this argument, instructors like Accetta could argue that the multiple showing of his videotaped course is a violation of his copyright. Accetta says that the next time he teaches a distance education class that it will be “a course online and that he will think more as a performer than as a professor pushing for royalties and other rights that he didn’t get at Pima” (Carnevale & Young, 1999, p. A45). Colleges like Burlington County College (BCC), in New Jersey, are keeping the royalties to themselves arguing that “the institution owns the intellectual property that makes up all online courses created on the campus” (Carnevale & Young, 1999, p. A45). Beliefs like BCC’s leads to the argument that instructors may chose not to participate in the development of online courses since they would lose their copyright ownership. Up until 1976, college professors “were automatically given copyright to the work they produced with colleges and universities having usually have little input into the content of faculty works” (Harney & Richards, 1996, p. 47).

One suggestion made by course designers is that “a faculty member would own the rights to online instructional materials and could sell access to various online colleges” (Carnevale & Young, 1999, p. A45). Arthur Levine, President of Teachers College of Columbia University, is quoted as saying “the day when professors make deals like rock stars and athletes may not be that far off; top professors might soon

sell materials to a variety of colleges--and even hire personal agents to arrange television appearances and other promotions to drum up business” (Carnevale & Young, 1999, p. A45). Instructors like Accetta have gained their own notoriety. Accetta is commonly known around Tucson as the TV professor (Carnevale & Young, 1999).

According to Kenneth Crews, associate professor at the Indiana University School of Law-Indianapolis IU School of Library & Information Science and the Director of the Copyright Management Center at Indiana University and Purdue University at Indianapolis (IUPUI), there is more at stake including:

Issues [regarding the] integrity of the work, as well as issues of the professional reputation of individuals and the institution.

Until recently, course materials were perceived as having little intrinsic value. Nobody's ever really fought over them. Sooner or later things will change, possibly because of a court case (Singer, 2001, p. 28).

Numerous questions need to be answered to resolve some concern regarding the copyright protection of distance education materials. If a professor offers a class via distance education, how can they be sure their lecture notes and class design are not being pirated by someone at a remote location? (Harney & Richards, 1996). If a professor develops a CD-ROM or other media for use in his classroom, there is a concern that significant economic value could be gained from this new media and the “university could attempt to claim ownership” (Harney & Richards, 1996, p. 48).

*Student notes.* Debates are occurring on campuses nationwide with regards to students selling their notes to online or local note companies. According to Dan Burk, professor of law at the University of Minnesota, "class notes are complicated, because they are a joint work or a derivative work of the professor's lecture" and the student's interpretation of the information presented (Singer, 2001, p. 29).

To create a lecture, the professor collects facts, which are not protected by copyright, assembles them, along with ideas from his or her field, and then performs those notes. The lecture may include responses to questions and other ad libs... the good student probably is filtering it, and not taking it down stenographically. So, what you come up with is a work of joint authorship or it might be a derivative work of the professor's lecture, in which case it's very complicated, as to who really owns the output. If it is the professor, then what (he or) she contributed is work for hire (Singer, 2001, p. 29).

As the debate occurred at many campuses, some began sending letters to these student note companies to end the practice of purchasing and publishing student notes. Early in 2001, "several schools, including Yale University and the University of California sent cease and desist letters to versity.com, one of the online companies posting student notes" (Singer, 2001, p. 29). A protest was registered with versity.com by Columbia University in response to faculty feedback (Singer, 2001). According to Columbia University Provost Jonathan Cole, "some faculty members didn't disapprove, but others felt their ideas were being misrepresented or

misappropriated” (Singer, 2001, p. 30). Eventually this resulted in versity.com deciding that, based on a numerous factors surrounding business objectives and legal implications, that the company would not be posting lecture notes on the CollegeClub.com site (Singer, 2001).

### *Copyright Lawsuits Impacting Distance Education*

The case of Arthur Miller is being used as an example in the “university/faculty debate because he sold videotapes of his lectures to Concord University of Law, an online institution. Harvard’s apparent objection is that “Miller is profiting from the sale of course material produced as part of his job at Harvard, and that the course material is being used at another institution” (Singer, 2001, p. 27). The argument reinforces the discussion of who retains the rights in work for hire settings. Miller and Concord argue that Miller “does not teach at the virtual law school or even interact with Concord’s students, either in person or online, and therefore, Miller is not violating Harvard’s policies (Carnevale & Young, 1999, p. A45). Miller argues “he isn’t teaching and had often conducted lectures at other places via other media, including television” (Singer, 2001, p. 27). Miller relates his “arrangement with Concord as analogous to publishing a book or giving a lecture on television” (Carnevale & Young, 1999, p. A45). This is similar to the situation where some adjunct instructors can currently use the same materials for different colleges.

Another case that raised some questions regarding distance education, academic progress and research is the case of Eric Eldred. In 1998 the Sonny Bono Copyright Term Extension Act (CTEA) was enacted to extend copyright terms “that will last the life of a work’s author plus 70 years; and renewed



copyrights will last 95 years” (Hossainzadeh, 2002, p. 1). Under CTEA, New Hampshire computer administrator Eric Eldred was prevented from “publishing copyrighted literary works on his website for an additional 20 years, prompting him to challenge the Act” (Hossainzadeh, 2003, p. 1). With the assistance of Harvard law professors Charles Nesson and Jonathan Zittrain and Stanford professor, a former Harvard professor, Lawrence Lessing, Eldred file for review before the Supreme Court in 2001. Prior to filing for review, the case had been ruled against Eldred in the U.S. District Court in Washington, D.C. and the U.S. Court of Appeals (U.S. Supreme Court, 2003).

In October 2002, the case was argued before the Supreme Court. During the oral arguments, Nesson argued that “CTEA violates the Constitution’s Copyright Clause, which states that the works of authors and inventors may be protected by government copyrights only for a limited terms and multiple extensions of the copyright terms over the past 40 years have caused the terms to be closer to unlimited than limited” (Hossainzadeh, 2003, p. 1). Instead the extension of these copyrights promotes only the “continued wealth of corporate copyright holders and will prevent public access to intellectual works, especially through the Internet, that is necessary for progress in the arts and sciences” (Hossainzadeh, 2003, p. 1). While it seemed that the Justices agreed with petitioner Eldred that CTEA was indeed unwise as a “matter of policy however the court seemed to have been unable to locate a peg in either the Copyright Clause or the First Amendment upon which to place such a conclusion” (Maizenberg, 2003, p. 1). A majority decision

against Eldred was handed down on January 15, 2003 by the Supreme Court. Justice Ginsburg wrote in the majority opinion that “Congress acted within its authority, and did not transgress constitutional limitations” (U.S. Supreme Court, 2003, p. 5). While the court ruled against Eldred, the two dissenting opinions from Justices Breyer and Stevens shows that there are some questions in whether to extend the copyright protections.

Similar in thoughts presented by Eldred in oral arguments, in his dissenting opinion, Justice Breyer wrote:

The economic effect of this 20-year extension—the largest blanket extension since the Nation’s founding—is to make copyright term not limited but virtually perpetual. Its primary legal effect is to grant the extended term not to authors but to their heirs, estates, or corporate successors. ...[T]he ‘incentive’ argument is really a sham, and indeed the legislation was written (by Congress’ own admission) at least partly to protect the entertainment industry’s revenue far into the future. What may count as rationale where economic regulation is at issue is not necessarily rational where we focus on expression—in a Nation constitutionally dedicated to the free dissemination of speech, information, learning and culture, there is no legitimate, serious copyright-related justification for this statute (U.S. Supreme Court, 2003, p. 36).

Attorney and writer, David Maizenberg wrote in his article *The Cultural Future of Copyright Monopolies* that “one would think that a simple wealth transfer from the general public to the entertainment companies is not a constitutionally permissible basis to extend the terms of the copyright monopoly” (Maizenberg, 2003, p. 1). Individuals seeking lesser restrictions on copyright agree with Justice Breyer and Maizenberg that much of the legislation that has been put forth in the past two decades to extend copyright protection is not designed to protect individual copyright holders but instead to benefit the large entertainment corporations that are trying to continue to gain revenue.

Maizenberg went further in stating that in “general the response to Eldred and similar rulings will be a mass acceleration of ‘piracy’ and open (as well as furtive) development of tools to facilitate it and the Court’s ruling will reinforce a general sense that the companies are the enemy and the Napsters of the world are heroic” (Maizenberg, 2003, p. 2). He concludes with “it is never a good sign when legislation and social trends are aimed in exact opposite directions” (Maizenberg, 2003, p. 2). As commonly discussed in constitutional law courses, legislating social behavior is as impossible as having the courts enforce laws against social norm. If people do not agree with the law they will continue to violate it regardless of any restrictions and enforcement that are attempted. When it no longer becomes social norm or people realize their mistake then enforcement will become possible.

RIAA grew tired of students in swapping materials over the Internet illegally and the music industry filed suit against four college students. These four students are accused of “offering more than 1 million copies of popular music” online for others to download (Gentile, 2003, p. 1). The lawsuits were filed in April 2003 in New York, New Jersey and Michigan federal courts by RIAA “which asked that the sites be shut down and that [RIAA] be paid the maximum damages of \$150,000 per song” (Gentile, 2003, p. 1). Should the court determine 1 million songs to be in violation, RIAA has the potential to collect \$150 billion dollars in damages. Alleged in the lawsuits are that “the students stored thousands of songs on a central server and made them available to students, staff, administrators and others with access to their schools’ high-speed Internet networks and downloaded using standard web browsers” (Gentile, 2003, p. 2). According to RIAA, the violations are occurring at Princeton University, Rensselaer Polytechnic Institute and Michigan Technological University. These three universities began immediately investigating the claims that are being asserted by RIAA (Gentile, 2003).

Reaction by the universities to the violations was varied with Princeton removing the site within 23 hours of being notified of the situation. Princeton spokeswoman Lauren Robinson-Brown stated “the school is unable to constantly monitor its network, but it does take swift action when told of copyright infringement” (Gentile, 2003, p. 2). Michigan Technological University President Curtis Tompkins is “irritated and wished the music

industry had contacted the schools when copyright infringements were discovered” (Gentile, 2003, p. 2). Tompkins went further to say that had RIAA “followed the previous methods established in notification of a violation, we would have shut off the student and not allowed the problem to grow to the size and scope that it is today” (Gentile, 2003, p. 2). At the Michigan site, RIAA stated that the student “ran a network offering more than 650,000 music files for downloading, in addition to 1,866 songs from his own personal collection” (Gentile, 2003, p. 2) .

In May 2003, it was announced that the four students had agreed to pay damages after RIAA had sued them for making money from illegal downloading (BBC News, 2003). The settlements range from \$12,000 to \$17,500 individually and will be paid to RIAA in payments that can come in installments over the next three years (BBC News, 2003; Ahrens, 2003). Originally RIAA sought to have each defendant pay damages of \$150,000 per song (BBC News, 2003). The defendants were Daniel Peng of Princeton University (\$15,000), Jesse Jordan (\$12,000) and Aaron Sherman (\$17,500) of Rensselaer Polytechnic Institute, and Joseph Nievelt (\$15,000) of Michigan Tech (Ahrens, 2003). While the four students agreed to not illegally distribute copyrighted music in the future, they also did not admit to any wrongdoing for their actions (BBC News, 2003; Ahrens, 2003). Defendant Daniel Peng’s lawyer Howard Ende said that the lawsuit was not about his client but “instead about [RIAA] sending a message, a message meant to intimidate” (BBC News, 2003, p. 2). RIAA executive Matthew Oppenheim said “the message is

clearly getting through that distributing copyrighted works without permission is illegal, can have consequences and that we will move quickly and effectively to enforce our rights” (BBC News, 2003, p. 1).

Some critics of the music industry have suggested that similar lawsuits could further alienate student consumers who were driven to piracy due to the high prices. Howard Ende stated that “it’s very unfortunate that the recording industry, in trying to protect their profits, uses the legal system to intimidate students who are often their best customers” (Ahrens, 2003, p. 2). Ende argues that instead of RIAA suing students, RIAA should be working with universities to develop better methods of technology controls (Ahrens, 2003).

### *Pending and Proposed Legislation*

Higher education “may be profoundly affected by the results of the revisions of the copyright and other intellectual property laws under consideration (Gilbert, 1996, p. 134). The failure to extend the Fair Use Doctrine to new media “could delay the use of attractive instructional options and dramatically increase related costs” for education (Gilbert, 1996, p. 134). Agencies like the American Council on Education and the Career College Association are both two highly active participants in negotiating legislative changes (Zilisch, 2002).

When the TEACH Act bill was in subcommittee, the Association of American Publishers (AAP) urged the passage of the Senate’s version. The Senate’s various would have extended legislation to allow the “right to use copyrighted work for educational purposed for distance education courses” (Brill’s Media Ventures, 2001, p. 8). The AAP, wanted the following provisions added to the bill:

- (1) The complete exclusion of works "produced primarily for instructional use";
- (2) Limiting the exemption to accredited, nonprofit educational institutions;
- (3) Limiting the exemption only to copies of works that are already in digital form;
- (4) Clarifying the meaning of "display of a work" so that it does not permit works to be displayed in their entirety; and
- (5) Requiring effective technological safeguards and providing the means to enforce their use (Business Publications, 2001, p. 46).

The biggest challenge in clarifying copyright and intellectual property matters is to “ensure that legislation aimed at protecting owners of intellectual property does not further limit educational use of copyrighted material” (Harney & Richards, 1996, p. 48). Limitations would compromise distance education’s promise of expanding access to education for all individuals (Harney & Richards, 1996). Using this reasoning AAP suggests that new ideas need to be considered that would help further distance education’s use of copyrighted materials while not limiting the creator’s ability to gain revenue and continue their work. Changes in copyright law will come from proposed legislation being developed by special interest groups like the Association of American Publishers.

Before any additional copyright legislation is enacted, it will face challenges from Representative Lamar Smith, chair of the House Subcommittee on Courts, the

Internet and Intellectual Property. At the June 2003 *Promoting Markets in Creativity: Copyright in the Internet Age* conference, Representative Smith said that he was “wary of passing new laws to protect copyrights online” in part because “existing copyright law is adequate and it simply needs to be enforced” (Gross, 2003, p. 1). Representative Smith’s statement comes from his belief that university officials are “being slow in punishing students who download music from file sharing services” (Gross, 2003, p. 1). Skeptical of new laws, Representative Smith stated that “the process begins with education and ends with disciplinary action, since new laws are hard to write, easy to ignore, and hard to repeal if unintended consequences harm the market place” (Gross, 2003, p. 1).



## RECOMMENDATIONS AND CONCLUSION

The conclusion of the reviewer is that there is no simple solution or answer to what administrators, students or instructors can do with regards to copyright other than seeking permission from the copyright holder. The reviewer has several recommendations that would help administration, instructors and students in reducing misuse of copyrighted materials.

One recommendation is to develop model licenses and releases to be used in distance education to allow for fair use in different settings. The reviewer recommends the development of mandatory information sessions for instructors, employees and students to make them aware of the federal and university policies on copyright. The reviewer also recommends that each college or department develop their own departmental policy regarding the use of copyrighted materials. Additionally universities need to develop a broad policy with regards to their computer usage and transferring copyrighted materials over the university system. Finally, the reviewer recommends involvement by administrators, instructors and students in the development of new federal copyright laws.

### *Model Licenses and Releases*

Creative Commons is an organization that has developed model licenses that would “allow musicians, filmmakers, authors, and other artists to relinquish some but not all rights to their works” (Chronicle of Higher Education, 2003, p. 1). Using a Creative Commons license would allow for works to “be distributed provided their creators are given credit” (Chronicle of Higher Education, 2003, p. 1). For the use in

noncommercial settings and uses, Creative Commons hopes that with the use of the licenses that “scholarly material, music, literature, film and science” can be made available to the public (Chronicle of Higher Education, 2003, p. 1). Various types of licenses would be made available for use:

- 1- for noncommercial use,
- 2- ability to copy a work but not able to make derivative works,
- 3- ability to distribute a derivative work, but only under a license that is identical to the one that is given to the original work (Chronicle of Higher Education, 2003, p. 1).

So far two universities, Rice University and Massachusetts Institute of Technology, have expressed interest in the model licenses that are being proposed by Creative Commons.

The proposal of having distance education students sign releases allowing the college, university and instructors the right to use the students’ images or work in future course is one that needs further development. The researcher found this idea to be rather interesting since the issue regarding copyright status has usually been focused on what instructors may or may not use for their courses. Instead the proposal allows for discussions, presentations and even thoughts that are used in various class sessions to become available for the instructor to use in future courses or even in publication. The reviewer sees that there is a benefit for the use of the release waivers, but has concern about whether students in graduate and doctoral programs would be willing to give up their works and images to their instructors or the academic institution without credit or compensation.

These releases also could be used by administrators when contracting with distance education faculty. The release for distance education course materials would state who would maintain the copyright and how the royalties would be dispersed. The releases used for distance education faculty should also state how the instructor will be able to use the materials and what would happen to the materials after the instructor leaves the university.

### *Orientation and Training Courses*

One recommendation would be the development of training courses for faculty and staff to make them familiar with copyright policies and infringement, plagiarism, file sharing or software piracy and how to prevent it from occurring or detect violations. Colleges and Universities should educate all their members about the ethical and legal implications of using information of various media in their research without permission or crediting sources (Gilbert, 1996). The training course could be developed by the forming of a committee involving members of the administration, faculty senate, student senate, residence halls, honor code or judicial hearing boards, training staff, technology department members involved in network security and traffic as well as the licensing, and the library or media support services. By involving these individuals, there will be more personal experience and expertise to provide insight in developing a presentation that will explain copyright in a cohesive and informational manner. These individuals will also be able to serve in advisory capacity to their own departments and divisions with regards to developing their own policies and procedures.

Students, faculty, and staff need to be made aware of the differences between shareware programs where individuals are put on their honor that they will pay for the program if they decide after a reasonable trial period that they like the program well enough to use it and freeware programs which are free but still copyrighted (Reddick & King, 1996). Having attended a training session the faculty and staff should be aware that after a trial period that the software must be purchased or removed from university equipment. Additionally those attending the training sessions would be aware that they can only install the software on one computer unless there is a site license permitting installation on multiple machines.

The addition of an orientation and/or training course at the University of Northern Iowa would be a recommendation that the reviewer suggests being added to Section 3.01 Academic Ethics/Discipline of the Policies and Procedures Manual. The reviewer feels that UNI would be helping students to become more aware of the professional and ethical standards of the field of study that the student is pursuing.

At Iowa State University, copyright training and counseling only comes after a student has committed a violation in hopes to deter future occurrences. The reviewer found it extremely interesting that the Dean of Students only becomes involved in helping deter future incidents after an initial event has occurred. The reviewer feels that should proper training and advisements to the students occur before starting courses at Iowa State with a reminder occurring at the beginning of each new course as well as throughout the course, that this policy would not be utilized often. Additionally, the reviewer found it extremely interesting that "if an instance where an instructors is uncertain how to handle an incident of suspected

academic dishonesty, the Dean of Students is available at any time to provide advice and assistance to the instructor in deciding a proper course of action to be taken” (Iowa State, 2003, p. 40). The reviewer feels that with proper training of instructors and the offering of refresher courses on copyright that this would help to make instructors more aware of the situation and how to handle it before a situation should arise.

The reviewer’s experiences during her undergraduate study with instructors discussing plagiarism occurred in a freshman English course, a Journalism course and in courses with Dr. Hutter. The reviewer’s instructor for Intellectual Property Law did not even discuss plagiarism or academic dishonesty while in the course, which was somewhat surprising to the reviewer at the time and to this day. The reviewer has been extremely impressed during her graduate studies at the inclusion of discussion of copyright in the courses each semester.

It is also the reviewer’s belief that had University of Iowa student Jeff Nylen attended such a training session that HawkSearch would not have been created for the purposes that it was used. Instead Nylen would have worked with the University’s ITS department to create a better method of tracking information that is being shared or requested instead of creating a free for all of copyrighted materials.

### *Honor Codes*

The introduction of honor codes will help to reduce the number of incidents only if there is use of training sessions initially to make students, staff and faculty aware of the consequences of copyright infringement. For the classroom, the reviewer recommends the adoption of a policy similar to Dr. James Hutter’s policy

that was discussed earlier. The reviewer, having taken classes with Dr. Hutter while getting her undergraduate degree, found the policy to be the most well defined that she has encountered. The reviewer was glad that she was never put in a situation where she would have to observe any violations and have to report them. The reviewer believes that the reason that incidents did not occur in Dr. Hutter's courses was out of respect of the policy. The classroom policy of Dr. Hutter serves as an excellent guideline for what instructors could adopt into their syllabi to have an honor code develop within the classroom. It is the hope of the reviewer that the honor code in the classroom would follow the student into the business setting.

Departmental honor codes should be developed that are similar to those of the professional organizations that their faculty belong to and are an accepted norm in the professional community. The enforcement of the honor codes within the department will help students and faculty to remember what is expected of them professionally with respect to copyright.

### *Changes in Instructor Teaching Methods*

As suggested by San Diego State University communications professor Peter Anderson, "smart instructors can create assignments that cannot be fulfilled with cookie-cutter Internet downloads" (Jenkins, 2002, p. 1). Creating assignments which requires students to relate more of their classroom learning experiences and book knowledge would help in making assignments more defined so students would be unable to use already created papers from commercial sites. By requiring students to submit paper and project ideas to the instructor will help to prevent students from procrastinating on what they are doing. Additionally, instructors need students to

submit rough drafts at some point during the process to make sure that the students understand how to incorporate or cite their sources into their projects/papers. This can help in making sure that students are making use of their time and respecting the work of others.

Before any of the suggestions above can be successful, an instructor must incorporate a discussion, if even for a few minutes, into the initial class to explain how copyright violations will not be tolerated in the course and that the instructor will use the policies that he or she has in place to punish those who break the rules and also that they will be turned over to the department or university officials for further punishment. If an instructor makes this statement at the beginning of each class, then they must stick with their statement and pursue it through all necessary levels. The reviewer feels that having faculty reinforcing the idea with students at the beginning of each semester will help to get the point across that plagiarism is a copyright violation—a theft which can be punishable by failing the course, being suspended or expelled from the university or even being sued in court.

Instructors also need to become more responsible with the materials that they are using in their classroom or putting on reserve. Many times they use these materials semester after semester, year after year without paying attention to the Fair Use Doctrine. This means that if an instructor finds a work that they wish to use frequently that they must go about applying for permission either through licensing or a restricted usage plan.

### *Departmental Policies and Enforcement*

To help deter copyright infringements, departments must enforce the departmental and university policies. Departments must support instructors who feel that there is an incident of academic misconduct involving plagiarism. While the reviewer understands the importance in believing that a student may make an innocent mistake or possibly that a false allegation will be made, if an instructor makes an allegation there is reasoning behind that decision. The instructor is more familiar with the material being discussed and is going to have a better idea if there is a problem after reviewing 10 to 30 papers for the class. Also having taught the course in the past will provide the instructor with experience in noticing common papers that are being used and similarity in submitted assignments. This will result in the instructor investigating their assumptions before making an accusation.

This is why it is necessary for departments to develop their own well defined policies that enforce the ideas and beliefs of the department, the university and the professional community. The policy must include having the department review reserve materials to make sure that instructors are not using materials that are in violation of the Fair Use Doctrine. If instructors continue to violate the policies, then the department must remind these instructors that their actions are breaking federal laws, university and department policies and making themselves liable for a lawsuit. Since no one is exempt from the copyright laws, it is important that the department administrators take responsibility for their faculty in making sure that they follow the laws and help in making their students responsible users of copyrighted materials.



After reading the guidelines on plagiarism at Iowa State University in preparing for this literature review, the reviewer realized where her thoughts on the issue of academic integrity originated. The guidelines presented in the Student Catalog were reinforced during the reviewer's undergraduate studies. The reviewer was excited to discover where her beliefs on academic integrity originated and was also interested in how a policy that never impacted her academic career did impact her belief system. For the reviewer, those individuals who find it necessary to cheat or plagiarize to get ahead are not benefiting the university and instead are decreasing the value of not only their diploma but those of their classmates. For the reviewer the use of departmental enforcement of guidelines regarding academic integrity will help to reduce the occurrences of plagiarism that instructors, departments and administrators will encounter.

The reviewer was disappointed somewhat in the discovery of the statement in the University of Northern Iowa's Academic Ethics/Discipline guidelines that "a college student, by the fact that he or she holds that status, is expected to understand the distinction between proper scholarly use of others' work and plagiarism" (University of Northern Iowa Faculty Senate, 1983, p. 1). To the reviewer this seemed to be an easy way for the university to escape some responsibility for helping make students enrolled on campus more aware of the professional and ethical standards of their field of study.

The reviewer found the UNI statement "also unacceptable are the purchase of papers from commercial sources" a topic of much interest. Out of curiosity, the

reviewer decided to check out both SchoolSucks.com and TermPapersRUS.com to see how many various papers relating to this review could be located.

On April 6, 2003, the reviewer logged onto SchoolSucks.com and TermPapersRUS.com to discover nothing relating to copyright policy and enforcement in higher education and the impact it has on distance education. The reviewer was somewhat relieved that there wasn't such a paper on the site since this would seem to be rather hypocritical to offer any, let alone purchasing one on this specific topic. Also, the reviewer would have been in violation of Section 3.01 of the Policies and Procedures related to Academic Ethics/Discipline that clearly states that it is "also unacceptable are the purchase of papers from commercial sources" (University of Northern Iowa Faculty Senate, 1983, p. 1). Interestingly, the papers that were available on one website were also available on the other site. The reviewer's assumption is that those individuals willing to sell their papers to online companies will try to get as much money as possible without regard to their own copyright interest.

The reviewer was impressed that the Academic Ethics/Discipline policy was developed in 1983 and seemed to almost predict the use of online sources for serious violations. In the policy it states:

In cases of particularly flagrant violations of academic ethics relating to cheating or plagiarism, the instructor may feel obligated to recommend suspension from the University of Northern Iowa for a period ranging from the term in which the infraction occurs (with a loss of all credit earned during that

term) to permanent suspension from the University (University of Northern Iowa Faculty Senate, 1983, p. 2).

This statement shows the reviewer that the University of Northern Iowa (UNI) takes academic dishonesty as a serious infraction and strives to maintain a high level of respectability among the students who attend and graduate from UNI. This belief is reinforced by the reviewer's experience with the College of Education's Curriculum and Instruction Department's repeated discussions on ethics and copyright in the classroom.

### *University Technology or Computer Usage Policies*

Policy against programs like Kazaa, Morpheus, and Audiogalaxy must be adopted by universities to help in the protection of the university against lawsuits by copyright holders and also to maintain the integrity of the university's network. At the University of Virginia in the Responsible Computing Handbook the policy is included and students are expected to read it in order to pass the online computing quiz they take in order to gain access to their email account (Wallace, 2002). This should be modified by universities to make the students, staff and faculty aware that should they break the computer usage policies that their network connection will be terminated until all materials in violation are removed and the individual has attended a copyright law refresher course.

The reviewer agrees with the thought being presented by Syracuse University that turning students' names over legally is proper but the reviewer wonders about conflicts that the university may face from a privacy standpoint. When looking at fluctuations of network speed, it typically becomes slower when class is out for the

day. The reviewer can remember working on a research paper during her final undergraduate semester and having had a stable connection and then at 5:00 pm seeing the network speed decrease. Network connection problems continue to occur on campuses nationwide. The connections can be seen in a much more noticeable pattern when students go on break and the bandwidth remains at a constant usage level during the day and drops off at night. When students return to campus, the network usage levels immediately increase to a higher level during the daytime hours.

In the reviewer's opinion this network activity has one of the largest impacts on distance education. Many distance education students usually try to log in after they get home from work to participate in their various courses. The network connection for distance education students trying to study and learn is being impaired by individuals participating in illegal activities. In addition, distance education students are being charged a technology fee which was intended to help pay for the additional activity on the network servers, but the reviewer feels that the technology fee that is being charged to the distance education students is supporting the illegal activity conducted by students on campus. Instead the reviewer suggests that the technology fee be charged based on the bandwidth usage.

The reviewer agrees with Vice President and General Counsel for the American Council on Education, Sheldon E. Steinbach's, assertion that college presidents should "view the problem in terms of a business and budgetary issue as well as a legal one since it is a misappropriation of university provided facility and resources for nonacademic uses" (Kiernan, 2002, p. 37). The reviewer believes that when the realization comes to budget constrained university presidents that increased network

traffic over the university system is costing additional money, restrictions will be instituted that allow for a better operating system while saving the university money.

With the amount of traffic that occurs on a university system, there is often no way to determine what is educational downloading in relation to illegal file sharing. The reviewer therefore suggests that systems should be developed that will permit the university to monitor the traffic of individuals who are suspected of illegal file sharing. In implementing this system, individuals who have been transferring large amounts of data over the university network would be the only individuals being monitored. Should further investigation of the student's actions be necessary after a complaint by RIAA or MPAA, the university would already have information regarding the amount of usage and the types of files being used.

The reviewer was interested in the section of the Iowa State University Code of Computer Ethics discussing the billing of illegal use of computer systems and prosecution for statutory violations under Chapter 716A of the Iowa Code. This seemed a very proactive measure by Iowa State in attempting to reduce the number of incidents on campus but also in making individuals aware that any violation that occurs while using university equipment will be enforced. The reviewer is more curious about what level of reported incidents to outside agencies for enforcement occurs. The reviewer is aware that Chapter 716A of the Iowa Code was repealed and various additional acts were added to additional chapters. The reviewer feels that it would be important that Iowa State update the policy to stay current with the changing legislation in Iowa.

Additionally, the University of Iowa and University of Northern Iowa need to add to their policies something similar to Iowa State's policy of charging violators for illegal use of the computer system. The reviewer recommends that a statement be added to all three regent universities' policies that an individual using excessive bandwidth for extensive periods of time be charged for this usage to compensate for the extra load on the system. Those individuals who are using excessive bandwidth on the university network for illegal purposes will have to pay for their usage. Hopefully charging individuals will help reduce the amount of traffic on the network that would impact distance education courses that are occurring from 6:00 p.m. to 10:00 p.m. and require bandwidth to transmit video and audio. Additionally the reviewer hopes that charging individuals for excessive network usage will reduce the illegal file sharing of copyrighted materials.

Overall the reviewer found the University of Iowa's technology usage policy to be the most lengthy and confusing of the three regent universities. It seems as if the policy is revised frequently as new situations arise. These changes have resulted in the University of Iowa's policy to be inconsistent. The reviewer was extremely impressed by the policies of the University of Northern Iowa in regards to copyright since the policies were enacted prior to the use and misuse of the Internet in the 1990s. To the reviewer this shows that UNI is progressive in the way that it views copyright and technology.

Finally, in the reviewer's opinion the shutting down of HawkSearch was an excellent step by the University of Iowa in halting the common practice of file sharing of copyrighted materials. Shutting HawkSearch off assisted in reducing the

liability that the university may have faced as a facilitator or accomplice in the illegal sharing copyrighted materials over HawkSearch and the campus network. However, the reviewer feels that Nylen should have been removed from the University. While nothing was mentioned about his punishment, the reviewer feels the entire situation serves as a wake-up call for the community members that file sharing of copyrighted materials will not be tolerated at the University of Iowa.

### *Federal Changes*

Any opportunities to advocate extension of fair use to education and research use of information technologies should be taken (Gilbert, 1996). This means that students, faculty, staff and administrators must become active in supporting laws that will enable distance education to flourish. While the reviewer doesn't advocate immediate change, she suggests participating in professional organizations and their special interest groups. Through the participation in professional organizations, individuals can help in the formation of professional guidelines in which members will be able to promote change for laws supporting these ideals. Additionally, university community members must respect the copyright laws that are in effect and support the enforcement on campus as well as in their classrooms.

### *Overall Conclusion*

While the changes proposed are a suggestion, there are other options that the reviewer feels will develop as time requires new proposals. The most important method for copyright policies to succeed is to have students, staff and faculty respect these policies and to have administration that enforces these policies. Without respect

and enforcement, copyright will not be able to maintain its integrity and protection of the various artists, creators, and writers who have spent countless hours developing their ideas or works to share with the rest of the world.



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