Copyright Issues for the Distance Learning Professor

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Abstract. The Internet has made the accessibility of knowledge both instantaneous and global. The professor who teaches online must be aware of the legal issues created by digital technology. The scope of the Fair Use Doctrine in the U.S. Copyright Law is under debate by educators and copyright owners. Educators advocate amending the scope of works available for distance learning, under the Fair Use principle, to include the same range of exclusions allowed in face to face classrooms such as: audiovisual works, movies and videos. While copyright owners advocate licensing of materials, educators feel that licensing procedures and costs need to be geared to the needs and ability to pay of the educational institution, otherwise their distance learning students will not have access to the same materials as those who sit in the classroom.

Keywords: copyright law, distance learning, education, digital technologies, computers, the Internet, distance learning educators, fair use, professors, digital environment, international initiatives and U.S. copyright law, digital images, use of copyrighted materials

New technologies for conveying data in digital form are expanding at a geometric pace at which Internet companies, educational institutions and the financial marketplace can barely stay current. Many colleges and universities throughout the world are taking advantage of these digital technologies by offering courses and degree programs in the distance learning environment. This environment has expanded the types of opportunities that are available to educational institutions. Some of these institutions have entered into joint ventures within and without national boundaries. For example, the Western Governors’ University, a coalition of schools created within the United States, entered into a consortium with Britain’s Open University to be known as the Governors Open University System. This consortium will combine different styles of education for students who wish to earn a degree.

The resources available on the Internet and the ability to copy the data provided, are both exciting and precarious for educators who wish to use the wealth of resources available on-line. The invention and use of digital technologies have created numerous copyright issues for the owners and users of these technologies.
Consider the plight of the professor who is asked to teach a course in the distance learning environment. In the traditional classroom environment, the professor puts materials on reserve in the library; provides students with copies of the materials; and shows legally acquired videotapes and/or parts of these videotapes as part of the instruction without violating copyright laws. Now that professor is asked to teach the course in the distance learning environment and would like to use the same materials in the digital environment. This professor cannot rely on the traditional copyright information that s(he) has relied upon in the past. What types of materials can be posted in the digital distance learning environment without violating the copyright laws? Is the Fair Use exception applicable in the distance learning environment?

There is little question that an instructor may show a legally acquired film in the traditional classroom to broaden the learning experience in a given area. The right to do so for the videoconferencing of a course may also be permissible if the course is not videotaped. The right to do so in the digital environment gives rise to legally impermissible results. Violations of copyright law may result in litigation and penalties for the professor and his/her teaching institution. Generally, there is no problem with the instructor placing syllabi, class notes, biography, chapter summaries and assignments (personally authored materials with only lawfully used copyrighted materials) on the Web. However, the use of films, copies of copyrighted articles, books or summaries thereof can lead to enormous potential legal difficulties.

In order to understand the issues at stake, the fundamental principles of U.S. copyright legislation and decisions relating thereto will be reviewed. Thereafter, the involvement of the U.S. in international copyright protection will be considered. The paper also reflects on the Report of the Register of Copyrights to the United States Senate Judiciary Committee and the Fair Use Guidelines promulgated by the Conference on Fair Use. Finally, a discussion of the impact of these laws and guidelines on the distance learning educator will be addressed.

1. U.S. copyright principles

1.1. Copyright defined

A copyright is a form of intellectual property rights wherein protection is given to:

original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.¹