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Copyright Laws and Fair Use in the Digital Era: Implications for Distance-Education Programs in Community Colleges
Tommie Lawhon a, Demetria Ennis-Cole b & David C. Lawhon c
a Department of Counseling, Development, and Higher Education, College of Education, University of North Texas, Denton, Texas, USA
b Technology & Cognition, College of Education, University of North Texas, Denton, Texas, USA
c Information Technology Consultant, Dallas, Texas, USA

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COPYRIGHT LAWS AND FAIR USE IN THE DIGITAL ERA: IMPLICATIONS FOR DISTANCE-EDUCATION PROGRAMS IN COMMUNITY COLLEGES

Tommie Lawhon

Department of Counseling, Development, and Higher Education, College of Education, University of North Texas, Denton, Texas, USA

Demetria Ennis-Cole

Technology & Cognition, College of Education, University of North Texas, Denton, Texas, USA

David C. Lawhon

Information Technology Consultant, Dallas, Texas, USA

Practical information on the necessity for community colleges, instructors, and students to understand and abide by the copyright laws is essential. Whether developing, structuring, maintaining, or presenting courses, or instructing students on the development of their own papers, one must be knowledgeable about plagiarism, the Fair Use Act, and the Technology, Education, and Copyright Harmonization Act. Violations of the copyright laws can result in legal fees, awarding of compensation, loss of a position, and prison time.

Distance education is on the increase and can be advantageous to community colleges. It may be a cost-effective solution when dealing with
increased enrollments, lack of space, and shrinking budgets and funding. However, whether developing, restructuring, or revising courses, or evaluating the work of students, one cannot afford to ignore plagiarism and the legal responsibilities associated with online education—including the Fair Use Act and the Copyright Harmonization Act. The goal of this paper is to provide information that will protect instructors, institutions, students, and copyright holders of information used in distance-education courses.

COPYRIGHT LAWS AND ONLINE COURSES

Abiding by the copyright laws is essential in distance education. Violations can result in legal fees, awarding of compensation, loss of a position, and prison time (Alexander & Baird, 2003; Harvard University, 2004; Stanford University, 2002–2004). As online education becomes more common, the legal responsibilities of instructors and institutions in this atmosphere have grown to be both murky and dynamic. For example, the Fair Use Act (Alexander & Baird, 2003; Harper, 2002, 2003) does not extend the same ability to transmit audio and imagery online as it does in the classroom, in part because of concerns that electronic copying and distribution of media is too easy and can be distributed internationally too quickly, thus reducing the value of the licensed work.

An overview of instructors’ obligations for transmitting media online can provide lessons that will avoid legal headaches for both the teacher and the institution. Some sense of the copyright laws can be gained by reading the Fair Use Act and the Technology, Education, and Copyright Harmonization Act (TEACH) (Alexander & Baird, 2003). Several URLs relating to copyright laws are included in the references. The most recent is http://www.uwex.edu/disted/intprop.html (University of Wisconsin-Extension, 2005, January 18).

FAIR USE ACT

An understanding of general guidelines for Fair Use can be helpful when more specific information on the media’s license is unavailable. A license for online use may grant or limit additional rights, and needs to be followed. Alexander and Baird (2003), and Harper (2002, 2003) presented limitations on the use of copyrighted materials. For example, placing no more than 10% of a work online is generally considered Fair Use.

Fair Use guidelines are more liberal if the access to the online media is restricted. One method of limiting access is the use of a secure site that requires a user ID and password to access it, limiting entry to enrolled
students only. Another method is through digital rights management (DRM), which allows software or documents to be accessed only under a set of specific circumstances. For example, a file could be set to be usable for a period of time or number of views or downloads (after which it would become disabled). Or, it could only work on computers from a particular network.

The Fair Use Act allows audiovisual media to be used for online learning if DRM is implemented (Harper, 2002). Without DRM, one interpretation suggests limiting access to 15 days online. DRM or secure access can protect original works by the instructor such as worksheets, presentations, and teaching plans. This also can protect students’ submissions—such as essays and projects—from third-party use. The author of software or documents, or the faculty member, can implement the DRM limitations. More extensive information about copyright laws is available from Harvard University (2004).

**TEACH ACT**

The Technology, Education, and Copyright Harmonization Act was passed by Congress and signed by President Bush in 2002 (Alexander & Baird, 2003). This act expanded the allowed works to include the display and performance of nearly all types of materials; but the usage is subject to quantity limitations, as outlined in the Fair Use Act. Instructors need to alert classes to relevant facts about copyrighted information. “The act specifies that students should be notified that materials included in distance-education transmission may be subject to copyright protection, and notification should be included on distribution of materials for class” (p. 174). For additional information on TEACH, see Alexander and Baird (2003), Harper (2003), and Stanford University (2002–2004).

Legal actions by the copyright owner for infringements may result in awards for damages, loss of profits, and recovered attorney’s fees (Harvard University, 2004). “The penalties for copyright infringement, if brought to court, can be anywhere from $200 to $150,000 and could include prison time” (Alexander & Baird, 2003, p. 176). Stanford University (2002–2004) states, “Under the copyright laws, a court may award up to $150,000 for each separate willful infringement. Under Stanford policies, you may lose valuable privileges, including your employment, for not respecting the copyrights of others” (p. 2). If in doubt about copyright laws and infringements, “there are times when legal expertise is the ultimate answer” (Alexander & Baird, 2003, p. 171).

Instructors should check with their institutions for written policies or guidelines for copying, displaying, and distributing media content.
Teachers’ rights to redistribute their original works online may be restricted by published intellectual-property rules determined by the institution. If there is a question about whether a license is needed for the display of content online, get one (Harper, 2002). And contact the institution’s attorney if there are concerns about copyright laws or other legal matters related to e-learning (Alexander & Baird, 2003).

HELP FOR THE INSTITUTION, THE INSTRUCTOR, AND THE STUDENT

Plagiarism, a violation of ethics—and, in some cases, the copyright laws—is the use of another person’s words, ideas, art, or music without providing proper credit. Even when correctly credited, there is a limit on the amount of work that can be used from one source.

One subscription-based service that can benefit instructors and institutions is iParadigms’ (2005a) Internet database program, Turnitin. The fee for this service depends upon the type of institution, the license chosen, the products, the number of students enrolled at the facility, and the services needed. For example, the cost for one university for 1 year is approximately $16,000 for unlimited instructor submissions for papers of students (P. Pluscht, personal communication, November 18, 2004). A university professor who submitted a dissertation and student papers to Turnitin stated that “a wealth of information is available through this service” (B. Bush, personal communication, February 10, 2005).

Students’ papers are submitted electronically through iParadigms’ online service, www.turnitin.com. Then they are compared against 4.5 billion Internet pages and more than 10 million other student papers (iParadigms, 2005b). More than 30% of submissions through the service are determined to contain plagiarized materials (Apple Computer, 2004, p. 1).

Being aware that this service can be used for any manuscript, paper, thesis, dissertation, or other information could deter some individuals from cutting and pasting, or stealing, another’s work. It could encourage institutions, instructors, and students to learn more about the copyright laws, the Fair Use Act, and TEACH, and to give credit where credit is due.

CONCLUSION

Practical knowledge for developing, structuring, maintaining, and presenting online courses in community colleges includes information on the necessity of following the copyright laws. Instructors, students, and institutions need to be aware of the legal issues, institutional policies,
and specific guidelines for copying, displaying, and distributing media content. The resources, course content, required assignments and activities, and other areas should be carefully developed, implemented, and evaluated keeping in mind the Fair Use Act and The Technology, Education, and Copyright Harmonization Act. Plagiarism is easily exposed through the use of iParadigms’ Internet database service, Turnitin.

**REFERENCES**


