

RESOURCES AND FAIR USE KNOWLEDGE OF UNIVERSITY FACULTY WHO USE ONLINE COURSE MATERIALS FOR STUDENTS

Phyllis C. Sweeney, Dr. Jeffrey D. Kromrey, University of South Florida,
psweeney@tempest.coedu.usf.edu

ABSTRACT

While university faculty members are encouraged to increase their use of online course materials, many are not aware of conventional United States copyright law regarding fair use. The technology of digital information has vastly increased the ability of individuals to copy and distribute others' work as their own. This paper investigates the prevailing resources used to develop web-based course materials including the use of digital images, text, video and sound, and to determine the source(s) of information on which faculty members base their perceptions of fair use.

Keywords : Phyllis C. Sweeney, Jeffrey D. Kromrey, fair use, copyright, online course materials

INTRODUCTION

Post-secondary educators are facing technological challenges unknown to the framers of the United States Constitution and its amendments. Currently there is intense interest by higher education in the design and publication of texts, images, video, sound and other digital tools used for teaching students over an electronic communications network – a “mad rush” by universities, colleges and corporations to develop online courses, virtual universities, portals and courseware (10). To fulfill such an agenda, many universities and colleges encourage the use of web-based course content for several reasons: they have invested heavily in Internet infrastructure and technology; they wish to increase (or at least not diminish) student body size by offering more convenient courses for distance learners; they must compete with other institutions; and they may derive additional income from sales of online content.

While post-secondary faculty are encouraged to increase this form of communication with students, many may not be aware of conventional 1976 United States copyright law (doctrine codified at 17 U.S.C. § 107) regarding intellectual property (IP), their institution's Internet policies, or their own department's guides for educational fair use of materials harvested from other authors, artists, musicians and web-site designers. Fair use was designed to exempt teachers from copyright infringement based on laws intended for print media.

The technology of digital information has vastly increased the ability of individuals to copy, produce and distribute information, making the behavior of individuals a far more significant factor in the enforcement of rights than in the past. When information is stored in electronic form, it is subject to the same ethical standards as print-based information and tangible property. Among others, the Committee on Intellectual Property Rights and the Emerging Information Infrastructure (2) found no definitive or widely recognized formal research on this issue, only

circumstantial evidence that most people do not have an adequate understanding about copyright as it applies to digital intellectual property.

This research investigates the resources used by university faculty and their knowledge of fair use regarding web-based course materials. Specifically, the purposes are to: identify prevailing trends in faculty use of resources in the development of web-based course materials, including digital images, text, video and sound; determine the source(s) of information on which faculty members' perceptions are based; and interpret the differences in faculty use of the available resources based on gender, age, length of service, college/department, academic rank, tenure and number of online classes/sections taught.

Further significance of undertaking this study is:

1. The Recording Industry Association of America (8), which brought the seminal civil suit against the digital music file-sharing service Napster in 2001, claims it was aware of at least 1,762 copyright arrests in the first six months of 2001, nearly double the previous year.
2. The Sourcebook of Criminal Justice Statistics (1) issued by the Bureau of Justice Statistics reports that U.S. attorneys brought to trial 38 cases of copyright violations in 1999. Of the 39 defendants, 37 were found guilty.
3. Violation of copyright laws can be expensive. Infringement of a valid copyright is the threshold requirement for both criminal and civil copyright infringement cases and could adversely affect an institution financially or through negative publicity and liability.

Legal Conformance

In designing online course content, conformance with norms and laws and the enforcement of copyright laws and policies are critical. Deviation from copyright laws and policies is conceived as "negative" practice. General deterrence theory, rooted in classical sociological theory, suggests reducing the probability of deviance through some form of individual punishment such as fines and denial of tenure. Deterrence strategies focus on future behaviors, preventing an individual from wrongdoing (5). The goal of deterrence is the internalization of harm the guilty party has caused (3). According to Scott Sagan, "Deterrence works when expected costs are higher than expected gains" (9).

In a lecture given at Stanford University in 2000, Sagan (9) outlines the requirements of deterrence. The requirements are:

- (1) The capability to inflict unacceptable cost.
- (2) The threat of deterrence must be communicated.
- (3) Threats have to come from a credible source and be believable.
- (4) Individuals are rational actors who weigh the pros and cons before committing a deviant act (9; 6).

Indiana University School of Law Professor Kenneth D. Crews (4) has surveyed the copyright policies of 98 American research universities. His analysis reveals a variety of ways in which universities have responded to the conflicting goals of copyright policies: avoiding infringements while promoting fair use for teaching and research. Crews' explanation for post-secondary education's conservative approach is that the Copyright Act imposes liabilities that range from payment of damages or losses suffered by the copyright owner as well as the confiscation of copies and destruction of equipment. The law allows injunctions that bar further infringements, and can result in substantial penalties (a finding of statutory damage allows the court to grant up to \$20,000 per work unintentionally infringed, and up to \$100,000 for willful infringement). In some cases, a successful plaintiff can ask for the additional recovery of attorney fees which can easily be in the hundreds of thousands of dollars. Early fair-use guidelines failed to reflect accurately the law to embody workable standards, yet have persisted as models applied to digital technology. Crews contends that the newest guidelines perpetuate deficiencies of the past and create new hazards for copyright owners and users.

Solutions such as watermarks, shorter time period for copyright protection and reworking the fair use law itself is how Bruce R. Poquette (7) proposes exceptions for a fair use defense against infringement.

Methods

Design. Skills and resources available to this researcher, primarily the use of HTML, Microsoft FrontPage, Microsoft Access and Microsoft Excel were used to develop an online survey located at <http://www.coedu.usf.edu/psweeney>.

Variables. Independent variables for faculty demographics and professional characteristics are department, academic rank, age, gender, tenure and length of service. The dependent variable for Hypothesis 1 is the variety of resources faculty use to create web course content. The dependent variable for Hypotheses 2 and 3 is knowledge of fair use guidelines. Extraneous variables that may affect the validity of this research include the amount of training in web design and fair use guidelines a faculty member has received prior to the study, attitude toward participating in online surveys and quality of web-based content. Additional processes designed to control the researcher's bias is to make sure that the experimenter does not know the subjects' experience with web content design/development or fair use training prior to administering the survey and to not be present during taking of the survey.

Sampling strategy. The survey collects data from faculty members in each department of a large, doctoral research-extensive (Carnegie) university (referred to hereafter as UNIV) in the southeastern United States, who have designed/developed web content for students. Faculty members studied rely on at least one set of online course materials (authoring with HTML or any web-supported product such as CourseInfo Blackboard® or WebCT). Respondents are voluntary participants and unidentified to the researcher.

Instrumentation. Following considerable literature review, the researcher found no applicable survey instrument that addressed the questions used in this study. As a result, the researcher designed, developed and posted online a new survey instrument using Microsoft FrontPage 2000®.

To validate the design and structure of this instrument, the authority was based on logical (sometimes called face and content validity) expert judgment. Validation was requested and received via electronic mail (email) from three expert sources, two of whom are their respective universities' copyright and fair use specialists and one a survey instrument specialist. All three found that this survey effectively measures critical aspects of faculty members' online course materials and knowledge of fair use.

The survey consists of three sections: About You, Online Materials, and Scenario. With seven questions, the first section of the survey covers demographic data including gender, age, years taught, department, tenure, academic rank and number of online classes currently taught. The second section solicits information about electronic materials used by the survey respondent and the sources of those materials. The final survey section provides a hypothetical scenario related to fair use practices, and solicits the respondents' recommendations about permissions to obtain and actions to take.

Data analysis procedures. Quantitative analysis is appropriate for all hypotheses tested in this study. An unbalanced analysis of variance (ANOVA) and multiple linear regression will be used to test the differences in resources and knowledge reported by various components gathered in the demographic portion of the survey. If a significant difference in ANOVA is found, regression tests are indicated when testing the differences between two or more groups that have various resources and perceptions.

Data interpretation. As this study is ongoing, data will be plotted using Microsoft Excel[®] on x-y coordinate graphics indicating trend lines for the various resources and knowledge of fair use guidelines used by faculty members to design/develop web content for courses. A high use (20 to 25 or more) of requests for permission to use text, images, sounds and video should indicate a strong general knowledge of fair use guidelines. A low use (less than 20) of requests for permission may indicate a lack of training or low deterrence factor among faculty members. This may indicate that the educational institution being tested needs to make fair use policies more visible and/or training more available to faculty members who wish to use web-based course content.

In future studies, a similar survey could be developed and used to test resources and knowledge of fair use laws among various levels of students, i.e., graduate students vs. undergraduate students, adult students vs. high school students, etc. A similar survey may be useful for studying members of web page design user groups and employees who develop web pages for their own uses.

Survey Description

Section 1 – About You

Section	Question Number	Field Name	Options	
1-About You	1	gender	Male	
			Female	
	2	age	20-29	
			30-39	
			40-49	
			50-59	
			60+	
3	yearstaught	Less than 1		
		1-5		
		6-9		
		10+		
4a	department	Architecture		
		Arts & Sciences		
		Business		
		Computer Science		
		Education		
		Engineering		
		Fine Arts		
		Law		
		Library		
		Marine Science		
		Medicine/Nursing		
		Public Health		
		Visual & Performing Arts		
		Other		
4b	otherdept			
5	tenure	Yes		
		No		
6a	rank	Professor		
		Associate Professor		
		Assistant Professor		
		Instructor		
		Adjunct/Contract		
		Librarian		
		Other		
6b	otherrank			
		7	howmany	1-3
				4-6
		7+		

Section 2 – Your Online Course Materials

Section	Question Number	Field Name	Options	Weight*	
2-Your Online Course Materials	Part A – Text	1	yesnotext	yes-no	
		2	alltext		1-4
		3	assisttext		4-1
		4	journal		4-1
		5	studenttext		1-4
		6	biblioOK		1-4
		7	askfortext		1-4
		8	linktopage		1-4
	Part B – Still or Animated Images	9	yesnoimages	yes-no	
		10	makegraphics		1-4
		11	camcorderimage		1-4
		12	otherscan		4-1
		13	myclipart		1-4
		14	buyimage		1-4
		15	artist		1-4
	Part C – Sound	16	linkimage		4-1
		17	downloadimage		4-1
18		yesnosound	yes-no		
19		microphone		1-4	
20		musicCD		4-1	
21		officesound		1-4	
22		buysound		1-4	
Part D – Video	23	linksound		4-1	
	24	yesnovideo	yes-no		
	25	makevideo		1-4	
	26	buyvideo		1-4	
Part E – Design	27	videoCD		4-1	
	28	linkvideo		4-1	
	29	downloadvideo		4-1	
	30	designme		1-4	
	31	htmlhelper		1-4	
	32	assistdesign		4-1	
	33	buydesign		1-4	
	34	educdesign		1-4	

* Higher number indicates possible fair use violation

Section 3 – Scenario

Section	Question Number	Field Name	Weight*
3-Scenario	1	looklaw	1-4
	2	univlaw	1-4
	3	departlaw	1-4
	4	coworklaw	4-1
	5	ccc	1-4
	6	newsaskpaper	1-4
	7	newsaskweb	1-4
	8	artaskpaper	1-4
	9	linktextpage	1-4
	10	copytextNOask	4-1
	11	savetextNOask	4-1
	12	linkartpage	1-4
	13	saveartNOask	4-1
	14	useartaskOK	1-4
	15	useartNOask	4-1
	16	linkartNOask	4-1
	17	linkartaskauth	1-4

* Higher number indicates possible fair use violation

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