

Copyright Issues

Provided certain thresholds are met, much of our educational use of copyrighted materials is protected under the “fair use” doctrine (Templeton, n.d.). As instructors work to migrate course materials to the Internet, whether through a course management system or their own personal web pages, three main types of materials deserve special consideration. Printed materials, such as journal articles, have different copyright treatments depending upon the “how” and “why” of their online presentation. Video recordings, whether produced commercially or by amateur videographers, are also protected by copyright; since the invention of the VCR, and most recently with the advent of YouTube, copyright protections are violated countless times each day. Similarly, the creators of still images also enjoy copyright protection for their works. There are very specific rules for how each of these media may be used for instructional purposes; simply claiming “it’s used for educational purposes” is an insufficient defense to claims of copyright infringement. For each of these three types of media, examples of permissible uses which evolve into violations of an author’s copyright protections are examined to guide future instructor practices.

Most instructors attempt to use the most recent materials available when creating course content; requiring students to purchase the most recent version of a textbook is a good example. There are occasions when newly-published articles are particularly relevant to a course’s activities, and the instructor does not have time to properly obtain permission before the anticipated classroom use; instructors are within their rights under the “fair use” doctrine to make copies of for each student. Such “spontaneous” uses are limited to nine occurrences over the course of a class term, and instructors can only copy three items from any single volume of a periodical (Education World, 2010). Copies of such materials often end up in the instructor’s filing system and are encountered the next time the class is taught; in this case, though, the instructor’s use of such materials is a violation of copyright, as the idea of spontaneity no longer exists and the instructor had sufficient time to properly obtain permission to use the materials from the owner of the copyright. If materials are deemed to be of such educational value as to merit their use in future course sessions, instructors should always seek permission for their use.

VCRs, DVRs, YouTube, and other video recording protocols have greatly expanded instructors’ abilities to find and record video content for use in educational activities. Under copyright law, instructors may record (or request the school to record) programs broadcast on network or cable television. A teacher who records a television program about a subject currently under study in the classroom is permitted to use the recording for instructional purposes in the first ten class days after the recording is made, but can only use the recording for evaluation purposes after that; in fact, the recording must be destroyed 45 days after its creation. Similar to the retention period for printed materials mentioned above, such recordings are infrequently destroyed and removed from potential use, particularly if the recording was done by the teacher rather than by the media specialist at the school. Even so, if

an instructor wishes to use a video recording to augment classroom instruction, the best choices under permissible use guidelines are to locate a program that is specifically identified as permissible for classroom use, which can therefore be shown longer than ten days after its creation but still according to the producer's restrictions, or to buy or rent a recording "designated for home use" (Education World, 2010). It is extremely easy to find video content on the Internet, but avoiding YouTube and other video aggregators in favor of physical videocassettes, DVDs, and personally-recorded content is the best course of action for instructors to remain compliant with copyright law.

The classroom use of still images, such as drawings, graphs, and photos, is a particular area of concern, especially given the ability to quickly retrieve numerous results from a Google image search to illustrate a concept being taught. As soon as an image has been "fixed in a tangible form of expression" (Nolo, 2007), it is protected by copyright, so most of the results returned by such an internet search are likely copyrighted materials. Again, the idea of spontaneous use is important; if an instructor finds images online as while preparing the next week's instruction, it is likely permissible to use them once in the course of such instruction. Additionally, numerous shareware or freeware/stock images are available online, and are generally cited as such, especially if keywords such as "freeware" or "public domain" are used in a search; there are cases, though, where the license agreement of the freeware indicates that only a single use is permissible, so continuing to use the same image in later sections of the course is a violation of copyright laws. To be 100% sure of properly using still images or graphics, instructors would do well to create the material themselves, since there is no copyright issue with using one's own work for which one holds the copyright. There are certainly numerous cases in which taking the time or effort required to produce educational-quality images is a burden on the instructional design process, so instructors should be directed to carefully search online image galleries or hosting services for new versions of materials clearly identified as "public domain" or "no license required" for each intended use.

It is unlikely that an individual educator's impermissible use of copyrighted materials will ever be identified, much less prosecuted; there is simply too much online content to make searches for copyright violations feasible. As noted on the Stanford University Libraries' website, though, "Schools have a special responsibility to set an example of obedience to law" (Nolo, 2007). Knowingly violating copyright law sets the wrong example, and we owe it to our students to uphold both the letter and the spirit of the law. By carefully considering our instructional use of copyrighted materials, we can ensure that we set the right example and demonstrate proper 21st century literacy.

References

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