

“Managing Your Intellectual Property: What Faculty Need to Know to Publish and Teach in the Digital Age”

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UCLA Faculty Center

Notes from Breakout Session on Using Copyrighted Material for Your Courses

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Questions

How much latitude do we have as course developers?

Fair use is like pornography: you know it when you see it. But there are guidelines to help you decide. Some standard guidelines: if you make one copy to use in your course, that's ok; if you're using materials in face-to-face teaching, that's ok; if you're using part of something (not the complete text over and over), that's ok. It would go beyond fair use if you teach the same course every year and use/distribute the same materials over and over for years and years. And to make matters more complicated, U.S. copyright law provides different rules for different types of materials and formats. For example, music, images, film, and architectural material have different rules depending on the circumstances.

Where can faculty get answers to questions about copyright?

The [UCOP copyright Web site](#) and the [UCLA Library Copyright Policy Web site](#) are good places to start; they include information on fair use, sample permission agreements, images, information regarding the use of entire things in publications, electronic reserves, and more. But this is not same as asking a question of an expert. People with legal issues go to campus counsel, but it isn't really counsel's role to answer faculty questions on copyright, as campus counsel works primarily for the campus administration.

General Discussion

A better infrastructure is needed for dealing with these questions, especially when it comes to using copyrighted material for classes. It is a problem that there is no one on campus whose job it is to advise faculty on copyright issues.

One attendee said he has incorporated copyrighted material such as video and sound into the PowerPoint presentation he used in classes. The permission issues are unclear – whom do you ask, and in which circumstances?

Another attendee said he uses Academic Publishing Service (APS); they do all the copyright work with getting permissions for a reader, given enough time. But this copyright assistance is not for someone producing digital materials such as in a PowerPoint presentation. For a CD-ROM version of a course reader, APS would charge students more than for print. They will get the permissions, etc., but having it on a CD affects the marketability of the copyrighted work by making it easier to duplicate, etc.

There are other companies besides APS, which is UCLA's version of this service. At UCSD they use the Copyright Clearance Center for every publication used in classes, which is expensive and time consuming.

One attendee says he wants real change, or he'll stop using the materials at all. Publishers will keep asking for more and more money if we just capitulate, accommodate; we have to change the system.

This is a multi-factorial problem, and it must be dealt with on many fronts. How do we do it right now, and how will we do it later? We must deal with current realities and changing landscapes.

How does UC treat fair use – liberally? Strictly? Can faculty make own decisions, and if so, will the university back them up?

One attendee said how about if he buys space somewhere on the Web and puts his stuff out there online, taking the chance that this would be below the radar? But if it's out there, someone will find it. He doesn't want to let the system control him, but he knows he should work within the system, and he wants university to help him stay within the rules.

One attendee suggested that rather than use someone else's work, instructors could make their own video to use in instruction. There are lots of resources on campus for this.

The Faculty Committee on Educational Technology recently hosted a session on the open courseware initiative at MIT, which enables faculty to publish course content online. The initiative has grown a lot, and a big piece of it is copyright clearance. It started with seven staff to negotiate copyright clearance; now they do some three hundred courses a semester, which represents hundreds of files, and have only one person doing copyright clearance. How? They learned which publishers will negotiate and figured out alternatives for those that won't, which has led publishers to reconsider and renegotiate. It has been multi-pronged, simultaneous effort that has resulted in rapid changes in the behavior of everyone, including publishers, authors, the university, etc. The incentive to change has been that otherwise, companies will be excluded from millions of hits, and thus possible advertising for their videos, books, etc.

The UCLA administration will have a hard time bucking the trends. If you don't have a very strong, concerted effort, the situation will be that massive corporations will own all knowledge. Faculty and administrators need a strong ethic about freedom of information and the university's place within it. The university must change its ethics with respect to intellectual property and needs to say there's an unambiguous zone of freedom companies can't encroach upon; this type of concerted effort might have an effect. Even when the author or rights holder can't be found, there has to be a way to use copyrighted material for education.

A negative example: Sony's approach to digital rights management (DRM) was to reply by sending a virus back to the computer that the request came from; they were called on the carpet for that approach. Sony will come up with worse, albeit less clumsy tactics next, and other companies are doing similar things. In the motion picture industry, there's no office that defines

what is fair use and what is not; legal challenges are constant. No guidelines exist that say if it's for a university, if it's old, if it's for teaching, etc., then it's ok to use it. DRM is something they have to deal with every day in the movie business.

Commercial use is where the copyright owner has concerns. If what you create has commercial value and, specifically, if the commercial interest or value is in competition with the existing copyright owners, you might not have an exemption, and it is less likely to be considered fair use.

Copying a few seconds of a DVD to put on a Web site, even a section that's password-protected, or in a presentation is illegal. Rip-mix-and-burn is illegal. If an individual is a willful infringer, s/he can be forced to pay punitive damages.

The university can't protect instructors who take individual risks, and the university as an institution can't be charged with this type of illegality.

If an instructor makes every effort to get permission but fails, that's not really willful. But even in cases where there is no way to get permission to use a work whose author is unknown, it can still be an infringement to use it. This is an example of where an exemption needs to be made.

Major exemptions that the university would like to see have not materialized, but there has been some progress. If faculty get together and say that they need to be able to use things in multimedia presentations on secure networks, etc. – that this type of situation needs to be exempted from the law or considered as fair use – then change might occur. The initiative to do this needs to be faculty-driven; it is in the interests of both the faculty and the university.

Key Points

Faculty need:

- a place to ask questions and get answers.
- to take back the fair-use zone. Much instruction does not happen in the classroom but online, and fair use must be shaped use around what education really is in the twenty-first century.
- to become politically active on this issue. In order to do that, faculty need to be educated about the rules and issues, and they need to have resources to help them comply, such as copyright clearance centers, etc.
- to never give away their own copyrights. This follows the model at MIT and Michigan.
- advice on risk assessment. This involves more than advice on how to obtain permission; it includes advice on how to investigate and assess the risk of using copyrighted materials.

Key issues as defined by attendees:

- The university has to stop being reactive; it needs to play a leadership role in this area, and it needs to decide where in the university that role should reside. Should it be the Academic Senate – is it set up to address this question? Should it be university lawyers?
- Leadership from the grassroots – faculty, students, parents of students – is needed also.

- A bi-modal attack is needed, with the university as an institution redefining fair use, supported by the advocacy of faculty, students, parents of students, and alumni.
- Faculty should support use of open-access publications, use them, and boycott publishers that are highly proprietary, closed, and insist on extortionist rates. This affects both the university and the greater public good regarding persistent access to, use of, and dissemination of scholarly research .
- UC should be a leader in order to change the law that limits the use of copyrighted material in courses. The pace of its efforts needs to keep pace with companies who would limit this use in order to make a profit.