

CONSORTIUM OF COLLEGE AND UNIVERSITY MEDIA CENTERS STATEMENT ON PROMOTION OF DISTANCE EDUCATION THROUGH DIGITAL TECHNOLOGIES

Summary statement

The Consortium of College and University Media Centers (CCUMC), an organization representing approximately 450 media educators, producers and distributors, supports quality education through media in all forms. The promotion of distance education through digital technologies is a core concern of our members. Digital media offer flexibility in meeting a variety of student needs, and delivery of instruction to remote sites is an increasingly important activity for many colleges and universities.

As responsible users and producers of information, CCUMC is keenly aware of the need to protect creator interests, but to achieve educational objectives these controls must be balanced by reasonable access to digital educational media. In general, CCUMC members want to preserve the ability to teach remotely in the same manner that they do in the traditional classroom; i.e., to be able to use a full range of legally acquired materials in the spirit of the fair use exemptions. To achieve these ends, the law must be clarified in some key areas.

In response to the call for information on promotion of distance education, CCUMC's Government Regulations and Public Policy Committee compiled a list of members' issues and received answers to the specific questions issued by the Copyright Office. These are reflected in our recommendations. We are happy to provide the Copyright Office additional information (examples, detailed responses, or policies) on request.

Background on CCUMC

CCUMC's mission is to improve learning and teaching through the effective use of media/instructional technology services in higher education. Its membership includes representatives of media facilities affiliated with colleges and universities, primarily in the United States, as well as foundations, corporations, and commercial proprietors whose business supports the goals of the association. Many of its members are directly responsible for the delivery of distance education programs in institutions of higher learning.

CCUMC has been an active participant in the development of several copyright initiatives. In June 1994 the organization held a national conference on Educational Fair Access and the New Media at American University. Also in 1994, CCUMC developed and adopted a Copyright Code of Conduct for its membership. The organization was instrumental in the development of Fair Use Guidelines for Educational Multimedia which were included as part of the final CONFU report. In conjunction with PBS, CCUMC produced and broadcast two video conferences as part of the guideline development: *Multimedia Fair Use Guidelines: The Educational Gateway to the Information Age* (aired 9/21/95) and *Fair Use Guidelines for Educational Multimedia: The Final Document and Its Implementation* (aired 2/20/97)

Definitions

As characterized by our membership, distance education, also referred to as distance learning or distributed education, covers a broad range of approaches and technologies. Delivery systems make use of cable, satellite, Internet, campus networks, and telephone lines. Software is as varied and may include groupware, Web-based programs, videoconferencing, teleconferencing, cable TV, e-mail, and others. Distance education classes often involve a combination of original faculty work, such as PowerPoint presentations, and prepackaged materials. Faculty are concerned about protecting their contributions and creations in these environments. Interactive elements such as chat rooms and threaded listservs are an important part of many classes. Increasingly, classes involve asynchronous components, where students can access and interact with material anytime and anywhere.

Distance learning may comprise the entire class or only a portion. As the number of classes with substantial Web components increases, it becomes difficult to dissociate distance learning classes from traditional ones. One of our members defines its distance education as those classes where more than 50 percent of the course content is delivered electronically.

Distance education encompasses global distribution as well as delivery across single campuses, and copyright policy must be flexible enough to accommodate both. Many institutions are offering courses to students in affiliated programs in other countries. Some universities offer combined courses across institutions. Faculty are interested in teaching from distant locations while they are doing research overseas or in other parts of the country.

In the majority of cases, institutions of higher education that provide distance education are nonprofit and offer accredited programs. Classes are supported through standard tuition and class fees, and in most cases seem to fall under normal processes of academic review. Most institutions feel confident that they have the means to control access to registered students through passwords, pins, or the like. Most have policies or statements regarding copyright, but informing and instructing all relevant parties may be an area that needs more attention. In general, enrollments in distance education classes are comparable in size to those offered on traditional campuses.

Recommendations:

Educators would benefit from clarification of some areas of the law related to distance education:

a) Definition of classroom

The face-to-face teaching exemption should encompass the delivery of distance education courses to enrolled students wherever they may be, and make clear that places devoted to instruction may include the home, or perhaps even the workstation. Distance education serves a broad range of users who would not be found in the traditional classroom. Adult learners, who cannot physically go to a campus for reasons of time or geography, may access

courses from corporate settings or after hours from their homes. High schools benefit from university classes that enrich their educational offerings, provide remedial work, or offer college credits to advanced students.

Copyright policy should accommodate learning sites that support use of stand-alone modules or lessons designed for independent learning. For example, a professor might ask students at a remote site to complete only selective components of a program depending on the student's needs as analyzed by a pretest or by responses at determined points within the program. In another example, a student trying to conduct an experiment might consult only those modules needed to understand and complete the experiment.

b) Categories of works

Our members emphasize that the range of materials used in distance education classes is as broad as the needs of users. Policy for distance education should cover all categories of works; including audiovisual and dramatic works that have value as educational resources. The limitation in Section 110 of the U.S. Copyright Act of performance to only non-dramatic literary or musical works is problematic and interferes with some instructional goals.

c) Portion and time limitations

Portion limitations and copying restrictions should be weighed against reasonable use in the classroom. Use of a full poem, complete images, and even perhaps display of a full motion picture, for example, are legitimate and appropriate classroom uses of legally obtained material and should be sanctioned in the distance classroom, provided that there are reasonable measures in place for control and security. Our members have mixed responses to questions about imposing time limits on student copies. Copies should be made available at least through the end of the course.

d) Delivery

As stated in our definitions above, a growing number of courses are adding interactive and asynchronous components, and the law remains unclear on these areas.

e) Fair Use versus licenses or guidelines

Licenses and guidelines may have a role in facilitating distance education, but should not replace the application of fair use criteria.

Licenses can be an efficient means of obtaining access to educational resources, particularly for large bodies of material. To be effective, licenses must encompass the breadth of needs of the academic course and be delivered or confirmed in a timely fashion; this has not always been the case. Also, the problem of identification of copyright holders remains an issue for many institutions.

Fair use is essential for materials that fall outside commercially licensed products or extend reasonably beyond the bounds of guidelines. One of the hallmarks of higher education in the

United States is the flexibility of the faculty member to present his or her particular viewpoint or research. Prepackaged products and public domain materials will not always meet that need. Parties entitled to coverage should be the same as those covered by existing fair use clauses. The law should support technological and security measures that preserve fair use while safeguarding against unauthorized access. In light recent of legislation on circumvention technology, it is particularly important that educators have a simple, routine means for exercising their privileges under the fair use provisions of the copyright law.

Guidelines can be useful for building consensus and providing examples and may be appropriate for addressing some distance education issues after certain areas of the law are clarified. It is important that guidelines be understood for what they are: "guidelines," with a broadly recognized sphere of protection for users that does not prohibit the exercise of fair use provisions.

f) Reserves

There is strong support among our members for a means to address electronic reserves questions. As one member states, *"most publishers do not permit printing out of online materials which means a DL student cannot do what any on-campus student using a reserve desk or campus networked computer can do, i.e., make a copy of the material as covered by the current law. So long as DL students need to use a PIN to access the licensed, digitally transmitted materials they should be treated the same as closed circuit transmission ..."* Nevertheless, CCUMC recognize s that this is an area with distinct set of problems and questions that may require separate solutions.

Conclusion

It is evident that institutions of higher education are already taking advantage of the educational and pedagogical opportunities afforded by distance learning technologies in all their myriad forms. Affirmation of fair use for digital materials in distance education is essential if these initiatives are to continue. Some exemption or clarification in Section 110 is required to fully enable distance learners and prevent infringements. With assurance of reasonable and adequate protections, the market should be enhanced rather than damaged as more institutions make use of a wider range of materials for instruction.