

From: "Distance Education Study" <disted@loc.gov>
To: <jfed@loc.gov>
Subject: Fw: copyright questionnaire
Date: Thu, 18 Feb 1999 19:12:21 -0500
X-Mailer: Microsoft Outlook Express 4.72.3110.5
X-MimeOLE: Produced By Microsoft MimeOLE V4.72.3110.3

-----Original Message-----

From: Joeann Humbert <jhumbert@firstclass.rit.edu>
To: disted@loc.gov <disted@loc.gov>
Date: Friday, January 22, 1999 1:08 PM
Subject: copyright questionnaire

22 January 1999

In the last week, I have gathered responses at Rochester Institute of Technology in Rochester, New York, to the questionnaire concerning copyright issues in distance education. I hope these answers are helpful during the upcoming proceedings.

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Nature of Distance Education

(a) How may distance education be defined? In what sense does it differ from traditional face-to-face education? To what extent does it utilize digital technologies?

In what sense does it differ from the general use of electronic communications in educational settings?

(b.) What is the nature of distance education programs using digital technologies that are currently available, or in development? Do they involve students using the Internet as a resource, communicating with teachers by e-mail, communicating with class members in chat rooms, or participating in classes conducted by teleconferencing? To what extent are they interactive?

One of the strengths of the RIT Distance Learning program is its emphasis on faculty-student interaction. Using the notes conference, faculty and students are able to email to the large group in the class, a smaller subset in work teams and personally with the faculty member. This communication is modeled after the on campus, classroom model; the format is different but the intent the same. To enroll in a distance learning course at RIT, students must have internet access.

To what extent are they asynchronous?

All courses are primarily asynchronous; some have synchronous elements, for example, scheduled audio conferences, live chat sessions, faculty office hours

To what extent are copies made or kept and by whom?

Copies of articles and view guides are made available for students for cost of copies.

(c.) Are course materials made available in electronic form?

Yes.

To whom are they made available?

Students who are enrolled in the course.

What restrictions are imposed on their access, use, modification or retention?

Access is restricted to the class and protected by password entry. Generally retained for one academic quarter.

(d.) How are such programs funded? What proportion of the entities who develop or offer them are nonprofit? What types of fees are charged to students?

Students pay the same tuition rates as those on campus.

Are the programs intended to, and do they, generate a profit?

(e.) What proportion of such programs are accredited? By whom are they

accredited?

All programs offered in distance learning are accredited by the Middle State Association of Colleges and Schools.

(f.) Who are the recipients of such programs? What communities are served?

Students who would not be able ,under certain circumstances, to get to the RIT campus. For the site-based programs, the communities served are those near local community colleges and corporate sites, such as General Motors.

Are students primarily located in any particular geographic communities (e.g. urban or rural)? Are there particular criteria for enrolling in or otherwise gaining access to the programs?

Criteria remains the same for on campus, part time and distance students.

How many students participate at a time?

Departments set class limits so that faculty are able to communicate effectively with students, return assignments on a timely basis and handle the electronic flow of communication.

Are the programs made available to students in other countries?

Anyone who has internet access, a computer that satisfies the basic system requirements, a vcr unit and a telephone can register for an RIT distance learning course. Our most successful students are part-time adult learners who need flexibility but have the desire to get a college degree. Some courses have prerequisites so potential students should check with the department offering the course to see if they have the necessary prerequisites. Sometimes students can test out of courses. Students applying to a degree program must satisfy the criteria established by the department or college offering the course.

RIT enrolls around 800 distance learners a quarter (courses are offered four time a year) from all over the US and over 10 foreign countries. The BS in Electrical/Mechanical Engineering Technology has been (is currently) a site-based program limited to General Motors students in the Detroit, Michigan area and also several community colleges in southern New York state. This program, except for five mandatory lab experiences, will be available in the anytime anywhere format and is in the process of being phased into the anytime, anywhere format.

(g.) At what level are such programs offered? Are they offered at the level of elementary school, high school, college, graduate school, or adult education? Are the courses offered for credit, and as part of degree programs?

Offered at both college and graduate school level... all are offered for credit and are part of degree programs. Also, there is a smaller subset of courses offered to high school groups. These are established programs that offer high school students the chance to take advanced coursework for both high school and college credit. Courses are usually entry level liberal arts, computer science or mathematics courses.

(h.) To what extent is new content created for such programs, and by whom? To what extent is pre-existing content used, and of what type (e.g. motion pictures, music, sound recordings, computer programs, books)? How is it used and in what amounts?

Video may be used in varying degrees...some produced by faculty content experts at the Institute, some from outside vendors (pre-recorded materials). Amount of program/lecture materials varies from 1 to 30+ hours of recorded video when used.

(i.) Are there institutional policies in place with regard to the creation and use of such programs? Is any instruction provided to students or teachers in connection with such programs regarding copyright law, or regarding the giving of attribution or credit?

Yes, we use the institutional guidelines. Our course coordinators both advise and coordinate logistics for any materials requiring copyright clearance.

2. Role of Licensing

(a.) Where pre-existing content is used in distance education programs using digital technologies, to what extent do the persons or entities involved obtain permission for the use of that content?

When outside materials are used we will always clear copyright through distributor or original holder whichever is allowed. Contacts are one to one with permissions granted verbally or in writing. Where there is a contract and licensing fee involved, we keep a paper trail.

Is this accomplished by direct contact with the copyright owner, or in some other way? To what extent do the parties enter into negotiated licenses or use form contracts?

(b.) To what extent do the persons or entities providing such programs rely on defenses available under the copyright law in choosing not to obtain a license (ex., fair use, section 110(2), or the doctrine of implied license)?

We rely on fair use when attempts/contacts to clear copyright are not successful.

(c.) Have there been difficulties in obtaining licenses? If so, for what reason (s)?

Current holder name, address, phone information is not accurate.

Are the difficulties different in nature or degree than for other types of uses, including traditional education and including multimedia uses generally?

(d.) To what extent can technology be used now or in the future to ameliorate any difficulties in licensing?

On-line clearance centers would be a great idea!

Can it serve to facilitate the identification of rights holders, the clearance of rights and the process of obtaining licenses, including price differentiation based on such attributes as the user's purpose, need, institutional affiliation, or ability to pay?

YES! YES! YES!

(e.) What other options exist for making the permissions process easier? How likely is the development of collective or blanket licensing, or "one-stop shops," and within what time frame?

Turn around time is essential for program packaging and distribution to students when video is involved.

4. Application of Copyright Law to Distance Education

Is existing law adequate in addressing current and anticipated forms of distance education using digital technology? If not, in what ways is it inadequate? Are there reasons why digital transmissions should be treated differently from education through broadcasting or closed circuit technologies, or in a traditional classroom?

Current law is not adequate in addressing distance learning issues. It does not address the issue of database licensing. For example a library pays for a license for students, staff and faculty. Most publishers do not consider use by distance students to be covered by the license even when students use a PIN number. This is also a problem for electronic reserve materials required by DL students. 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, etc.

Is it preferable to deal with the copyright issues raised by digital distance education through specific exemptions like section 110(2) or through a flexible balancing approach like fair use? What role should be played by voluntary guidelines such as the Fair Use Guidelines for Educational Multimedia (sometimes referred to as the Consortium of College and University Media Centers (CCUMC) guidelines)?

I believe we need to spell things out in the law as much as practical or we will continue with the current problems. The guidelines are helpful where the law is lacking and since publishers often disagree with guideline interpretations, it leaves DK providers in a fix.

(c.) If a new or amended exemption or exemptions for distance education were to be adopted:
- Which section 106 rights should or should not be covered

- What categories of works should or should not be covered
- To what extent should there be quantitative limitations on the portions of a work that can be used?
- Who should be entitled to the benefits of such an exemption-- accredited or nonprofit institutions only?
- How should the class of eligible recipients be defined
- Should such an exemption be limited to nonprofit distance education activities?
- Should the use of technological measures to protect against unauthorized access to, and use or retention of, copyrighted materials be required? If so, what types of measures?
- To what extent should the availability of licenses for the use of copyrighted works be considered in assessing eligibility?
- Should there be limitations on student copying or retention of the copyrighted materials?

Yes, limit for duration of course.

- Should the provision of electronic reserves be included?

YES

- Should the provision of any information about copyright law be required as a condition of eligibility?
- Are there other factors that should be taken into account?

The term "display publically" must be better defined to accomodate Internet use.

Limit portion of works to that covered under current fair use.

Should lean to the nonprofit since that is supported under the constitution's

concept of copyright, ie. "distribution of knowledge".

PIN and other technological means should be used to protect copyright holders.

There already are limitations on student copying and they seem to work for traditionallly distributed materials.

Licensing should continue to play a role similar to any contract.

(d.) What would be the economic impact of such an exemption, including the impact on the actual or potential markets of copyright owners of different types of works?

I do not believe the economic impact would be significant as long as reasonable protection is available as it currently is for music and print materials. Have copying machines in libraries resulted in fewer books? I think not.

(e.) What would be the international implications of such an exemption? Would it be consistent with U.S. treaty obligations?

Might be some international implications