

ACADEMIC ■ IMPRESSIONS

Copyright on Campus: Problems and Policies

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Over the last three decades, colleges and universities have increasingly recognized that copyright is a major concern. Technology has made the reproduction, distribution, performance, and display of entire copyrighted works for teaching and learning not only possible, but ubiquitous. Since the advent of the photocopier, college faculty have reproduced copies of works or portions of them for their students to supplement textbooks or for courses in which textbooks were unavailable or outdated. Today, the ability to digitize works makes it much easier to reproduce and distribute them to students. Further, moving from 16 mm motion pictures to videotapes and DVDs has made it much more likely that faculty members will use movies or portions of them to show to their classes in order to illustrate various points, to study modern culture as reflected in film, or to examine filmmaking through a series of motion pictures. With each new level of technology, it has become easier to use copyrighted works in the classroom and as supplemental materials for outside reading or viewing.

At the same time, copyright owners are exploring new business models to deliver content directly to end users as well as through licensing to academic institutions. Thus, much reproduction is permitted under license agreements. Additionally, fair use plays a huge role in permitting some uses in nonprofit educational institutions. But not all uses are fair or covered by license agreements. Recent actions of the Recording Industry Association of America (RIAA) and the Association of American Publishers have made it clear that campuses have a responsibility not only to comply with the law, but also to proactively educate faculty, staff, and students about copyright and the consequences of infringement for both individuals and the institution.

Many universities and colleges are considering for the first time whether traditional faculty ownership of the copyrighted works they create is still the appropriate model for all types of works, especially online course materials and multimedia works used in the classroom. The work-for-hire doctrine typically would dictate that faculty-created works belong to the institution as with those generated by staff members in the course of their work. Students also produce copyrighted works as assignments in classes, and the ownership status of works they create is also of concern to academic institutions.

To deal with these and other issues, colleges and universities are adopting new copyright policies or revising older ones on copyright ownership and the use of copyrighted works.

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Why a Copyright Ownership Policy?

A copyright policy encompasses both the use of copyrighted works owned by third parties and the ownership of works generated by faculty, staff, and students within the institution. The purpose of an ownership policy should be to encourage research, scholarship, and the dissemination of knowledge; thus, the ownership model the school adopts should further this purpose.

What Use Activities Cause Campuses the Most Concern?

Faculty – The single most problematic activity today is incorporation of copyrighted works in course management software. While some uses may either be fair or covered by license agreements, faculty typically are unaware of which works are licensed and what the contours of fair use permit.

Staff – Staff members now have the ability to download music and movies just as students do, and some campuses have experienced difficulties monitoring activities of staff members during work hours using university equipment. Moreover, activities such as library electronic reserves are typically managed by staff members.

Students – Without a doubt, the most problematic activity of students is using campus networks to download copyrighted music and motion pictures. Students certainly can infringe copyright by reproducing and distributing books, articles, and other works, but music and movies seem to be the target of their interest and consequently of enforcement efforts of the RIAA and Motion Picture Association of America.

Liability for Infringing Activities

In 1998, the Digital Millennium Copyright Act (DMCA) made it clear that colleges and universities may be liable for the infringing acts of faculty, staff, and students in the digital environment. There are, however, some actions that the institution may take to limit its liability. The increased potential for copyright liability has spurred campuses to adopt and revise copyright policies in order to educate members of their communities and to establish limits.

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Writing a Copyright Policy

Reasons to Adopt a Comprehensive Copyright Policy

There are many reasons that colleges and universities should adopt and implement copyright policies that include both the use of copyrighted works and ownership.

- To provide faculty, staff, and students with a clear understanding of what the institution expects of them
- To clarify the expectations of both the creators of copyrighted works and the institution
- To establish bright line rules and responsibilities to guide actions of those involved
- To define lines of communication and clarify accountability
- To provide authority for those charged with implementing and enforcing its provisions
- To promote continuity over time and among changing campus stakeholders

There are various types of policies: (1) policies that are statements of belief, position, and value; (2) those that mainly provide a method of risk management; (3) policies that function as a rule and (4) those that are an aid to program effectiveness (Graff 1997). An ideal copyright policy reflects all four types.

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In general, it is critical that institutional policies:

- Be consistent with one another
- Use common terminology
- Reflect real requirements
- Are up to date and reviewed regularly
- Explain the consequences of breaching the policy
- Are not only implemented, but followed and enforced

Moreover, policies should be readily available to faculty, staff, and students, who also should be regularly reminded of the policy.

As with other campus policies, a copyright policy should be approved through the regular policy process. It is also very important that such policies, especially the ownership provisions, have an appeals process which is clearly detailed in the policy document.

The best copyright policies are embraced by the campus community, but the ownership portion of the policy is more likely to be positively received than the use portion. Typically the ownership policy reinforces the rights that faculty automatically assume they have to own the copyright in the works they create. By contrast, policies that restrict uses faculty want to make of others' copyrighted works whether by direct prohibition or by requiring permission and perhaps the payment of royalties for the use provoke resistance or even willful disregard.

How to Draft a Copyright Policy: Getting Started

Faculty leadership is key in policy drafting (and later acceptance), but other campus representatives also should be included on any drafting group.

Since copyright policies apply across the campus, a drafting committee should have representatives from various stakeholders. Faculty leadership is key in policy drafting (and later acceptance), but other campus representatives also should be included on any drafting group. Legal counsel certainly possess the skills to create a policy, but a jointly drafted policy is more likely to be accepted by the community than one imposed by administrators.

A model committee would be chaired by a faculty member or by co-chairs and have the following types of members:

- Faculty from different disciplines than the chair
- A librarian
- An information technology representative
- A member of legal counsel staff
- An undergraduate student
- A graduate student
- A staff member who creates copyrighted works
- A member of technology transfer staff or a research administrator

If the policy is not to address student matters such as downloading of music, then the two students should be student employees. Other important issues include the following:

- Who appoints the committee?
- Who will draft the initial charge?
- Will the committee have the opportunity to draft the charge or at least revise it?
- How will the existence and work of the committee be announced to the campus community?
- Will the committee hold public sessions or have other ways to gather information from the campus community?

Initiating the Committee's Work

A number of choices must be made when drafting institutional copyright policies. For example, what is the appropriate level of detail for the policy? Will it contain only a general policy statement about copyright or will it contain guidelines or specific best practices? How much background information and explanation of copyright law should be included? Will there be a separate educational effort for which a brochure, website, or whitepaper will be prepared to share with the campus? It may be impossible to answer all of these questions before beginning the work on a policy, but they will need to be answered at a fairly early stage. There are also very practical decisions to be made at this stage.

- Who will be charged with gathering materials for the committee?
- How often will the committee meet?
- Should the meetings be frequent or longer and less often?
- Would an initial all-day meeting be useful to educate the committee about copyright and the choices for coverage in the policy?

Policy Choices

Even comprehensive policies may not address every possible issue. Or some campuses may choose to have separate policies for student activities and for faculty, staff, and student employees. Will copyright use and copyright ownership be given equal treatment in the faculty/staff policy? Different decisions may be appropriate for different types of works such as:

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- Scholarly articles
- Scholarly books
- Textbooks and other teaching materials
- Online course materials
- Miscellaneous performance works such as audiovisual, multimedia, and musical works
- Sculpture, paintings, and photographs
- Software

Are there specific factors that might change the normal ownership? For example, if the academic institution provided significant funding or support for the production of the work should the ownership model change? What if the work is created over time and by multiple authors (such as lab manuals) should the institution own the copyright?

One of the most critical decisions is what position the campus will take on fair use. Will it push the fair use envelope, or will it take a more conservative position?

The use of copyrighted works is also usually included in campus copyright policies. One of the most critical decisions is what position the campus will take on fair use. Will it push the fair use envelope, or will it take a more conservative position? The following issues represent policy choices:

- Reproduction and distribution of printed works for classes
- Posting digital copies of printed works online or in course management systems
- Using motion pictures and music in the classroom
- Displaying images in class
- Performing and displaying copyrighted works on course management software and in distance education
- Placing materials on electronic reserves

Within each of these activities, there are many additional choices for the policy. For example, assuming that the institution decides to take advantage of the TEACH Act's exceptions for transmitted performances and displays, what technology will be used to ensure that performances and displays are not downloaded? Will permissions be handled centrally, or will individual faculty members be directed to obtain his or own permissions and maintain records?

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Policy Choices: End of Process

At the end of the policy drafting process, additional choices must be made. Will the policy contain citations or links to other copyright information? Will there be a significant number of references or links to other copyright information or only a few? Who will be charged with answering questions that might arise after the policy is implemented? How will the policy be publicized? Will there be programs to explain it? Will it be posted online? If so, who will be responsible for updating it?

As the policy nears completion, the draft should be shared with the various governance groups on campus. The faculty senate and faculty members of the drafting committee are ideal spokespersons for the policy, which is particularly important if the policy represents a substantial change from an earlier policy or practice.

Once a policy is adopted, it is important that there is sufficient lead time before implementation. This will enable adequate time to publicize the policy and to reduce misconceptions about it.

Conclusion

Drafting and implementing an institutional copyright policy will serve to clarify the needs and rights of institution as well as of its faculty, staff, and students. It can also be a very useful collaborative process. A properly drafted ownership policy, with ample input from all affected groups and adequate publicity about its contents, should make the transition a smooth one. It also should reduce disputes between the university and the faculty over the ownership of works created by faculty and the infringement of copyrighted works by students and staff. A copyright use policy provides guidance to faculty and staff who wish to reproduce and distribute materials to their classes and to perform and display audiovisual works and images in the course of instruction.

This whitepaper has provided a road map for beginning to draft or redraft your institutional copyright policy. Several questions have been raised and issues highlighted to aid in initiating your policy drafting process. The answers to these questions depend on your institution's own unique intent, process, and set of needs. Additionally, a drafting committee representing faculty, staff, and students will have its own ideas about what should be included in the policy. Completing a copyright policy is a tremendous benefit to the institution and the members of the academic community, but copyright policies must be revisited every few years as teaching methods, educational technology and, students change. The questions raised and issues identified during the initial process will help in future efforts.

Academic Impressions

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References

Linda L. Graff, *By Definition: Policies for Volunteer Programs*, 1997, at <http://www.energizeinc.com/art/abyd.html>.

Join us for the Understanding Institutional Copyright Policy conference to examine key issues and trends in copyright and intellectual property in colleges and universities.

<https://www.academicimpressions.com/conferences/0509-copyright.php>