Copyright on Campus: Coordinating the Confusion

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COPYRIGHT ON CAMPUS: COORDINATING THE CONFUSION

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Abstract

As modes of teaching change (e.g. blended courses, distant education, social networking applications) and as copyright law evolves in response to changes in information format and delivery, confusion persists amongst educators, students and librarians about what rights we have in the materials we collect and make accessible. At University of Illinois Springfield, this confusion became so pervasive that a small group of library, IT and distance learning professionals held informal meetings about how to best clear up the confusion. These informal conversations led to the formal creation by the Provost of a campus wide copyright committee. This session will address the types of copyright issues that arise in an academic setting and how one university took steps to successfully address these issues through a coordinated effort.

Introduction

Academic copyright and questions of fair use dotted the legal landscape in 2008. In April 2008, Cambridge University Press, Oxford University Press and Sage Publications filed suit against Georgia State University officials for copyright infringement. The lawsuit stemmed from the University's alleged "systematic, widespread, and unauthorized" distribution of large amounts of copyrighted works through "a variety of online systems and outlets utilized and hosted by the University for the digital distribution of course reading material."¹ The lawsuit contends that the University encouraged and permitted professors to compile electronic course packs by allowing the posting of multiple chapters of books and pages of text in excess of fair use guidelines through the course management system Blackboard™ thereby denying the plaintiffs compensation for use of its materials. The publishers cite the holdings of Basic Books, Inc. v. Kinkos Graphics Corp.² and Princeton Univ. Press v. Michigan Document Servs., Inc.³, which held the defendant copy shops liable for copyright infringement for failure to obtain permission and to pay royalty fees for the photocopying and sale of printed course packs to students. The Georgia case raises, for the first time, the issue of fair use and course pack creation in the context of electronic copies and digital rights. The outcome of this litigation will affect colleges and universities and their e-reserve and courseware practices.

In the fall of 2008, two additional critical developments occurred in the area of fair use. On September 8, 2008, a federal court in New York rendered a decision in favor of J.K. Rowling and Warner Brothers in a copyright lawsuit to enjoin publication of the *Harry Potter Lexicon*, an encyclopedia about the renowned series of fantasy fiction. The court determined that the author's use of significant portions of exact text from Rowling's novels in the encyclopedic content of the *Lexicon* did not fall within fair use.⁴ Finally, in October 2008, Google announced it had settled the copyright infringement lawsuit that had been filed against it three years prior in connection with its book scanning project. The terms of the complex 200 page settlement and the effects it will have on not only copyright enforcement but also upon libraries and publishers have been the subject of numerous meetings, seminars, and written commentaries.

In the midst of this swirling climate of copyright litigation, I began my job at the Springfield campus of the University of Illinois. Part of my duties, as Director of Collections and Research Services at Brookens Library, is to assist faculty and Library staff in making fair use determinations with respect to the use of Library materials. However, within weeks, it became apparent that confusion about what was and wasn't permissible under the Copyright Act, and more so, the TEACH Act⁵, pervaded the entire campus community, leading to frustration

amongst faculty and the application of inconsistent practices and guidelines across campus with respect to copyright compliance.

Formation of the “Copyright Compliance Coordination Committee”

University of Illinois Springfield (UIS) was founded in 1995 when the University of Illinois system acquired Sangamon State University. Over the past 15 years, the campus has grown from being a commuter school for upper level undergraduates and graduate students to becoming a high quality public liberal arts university offering bachelor, master, and doctoral degrees across 43 degree granting programs both on-ground and online.⁶ Over the past seven years, the number of FTE has increased 80%, and students enrolled in online only courses has increased 356% at the undergraduate level and 322% at the graduate level.⁷ This growth in not only the overall campus population but also the number of persons involved in online learning mandated an examination of institutional practices with regard to copyright compliance.

A small group of staff from the Library and the Center for Online Learning and Research Services (COLRS) and I began meeting informally to discuss the common copyright questions we received and how we could best support pedagogical goals while remaining compliant with the law. In December of 2008, I prepared a memo for the University’s counsel, Provost, and Library Dean that identified the predominant areas where clarification on copyright was needed at UIS. These areas included: (1) copying and electronic dissemination of copyrighted materials, such as our e-reserves system set up through Blackboard™, (2) the use of streaming media in online and blended courses, (3) display of copyrighted works on campus (e.g. film series sponsored by campus groups or clubs, and (4) scholarly communication, including development of an institutional repository. In response to this presentation of the copyright issues on our campus and my observations of how the issues could be best-addressed, the Provost requested that I chair a committee, which he dubbed the “Copyright Compliance Coordination Committee,” comprised of members of various campus units that dealt with copyright compliance. The Committee’s charge was to help ensure that copyright law was complied with on all fronts and to educate the campus about fair use in a consistent manner.

Several persons were invited to join the Committee including faculty from the Visual Arts and Modern Languages departments; the assistant director of Campus Services, which obtains permissions for the compilation and duplication of printed course packs; staff members from Information Technology Services (ITS) who were involved with media digitization and streaming; online education specialists from COLRS; the director of the Office of Electronic Media; and the Library Operations Assistant who supervises both in-library and electronic reserves. At the Committee’s first formal meeting, we drafted a list of priorities, based in part upon the memo presented to the administration. To facilitate further communication and collaboration among members, COLRS staff set up a Ning site for use by Committee members and University officials. Members use the Ning site to post draft documents, links to relevant news stories, and copyright resources found on the web. Finally, to share the Committee’s mission and objectives with the campus community, we hosted an informational meeting, utilizing a physical meeting place and an Elluminate classroom.⁸ After the presentation, attendees completed a survey that polled them as to what their primary concerns were and what presentations or workshops they wanted to see in the future. As expected, the survey results mirrored our priorities list.

Priority # 1: E-Reserves

The Committee’s first action item, based upon feedback received and our own list of priorities, was to review e-reserve workflow. To assist the campus in understanding copyright law as it applied to use of Library materials, I composed a booklet entitled “Guidelines and Procedures for Copyright Compliance in the Use of Library Materials.”⁹ This booklet contains

explanation of the fair use test, application of the TEACH Act, instructions for placing items on reserve, and generally accepted guidelines for quantity and type of materials that can be used. The Committee's next task was revision of the Library's reserve request forms, as well as development of a new form for streaming media requests. Until this time, Library and ITS staff had attempted to make the paper reserve forms work for requests for electronic reserve items as well as requests for streaming media. The new forms are now interactive PDFs that can be submitted electronically. A click-through copyright statement enables the requestor to certify copyright compliance. The location of e-reserve items was also revisited. COLRS staff created a new tab in Blackboard™ for "Library Resources" and under that tab created sub-folders for linked readings (persistent links to articles within databases), for reserve readings (PDFs of articles) and videos (streamed media). Finally, the Library Operations Assistant and I recorded a 10 minute tutorial for faculty and staff on reserves processing, including a demonstration of the new forms and a brief overview of fair use. The new system and forms were in place by the start of the 2009/10 academic year, and thus far the response has been positive.

Priority # 2: Streaming Media

Fulfilling the increasing number of streaming media requests in a manner consistent with copyright law and academic freedom principles occupied the Committee's second priority action item. Documentaries, award winning theatre productions, and Hollywood produced blockbusters have a message that can be utilized and expounded upon in the classroom. However, when that classroom is a digital classroom, the law prohibits certain uses. Under the TEACH Act and the Digital Millennium Copyright Act (DMCA)¹⁰, the use of films in distance education is restricted in terms of format and quantity. Under the DMCA, the University is not permitted to circumvent any anti-piracy measures embedded in DVDs and other media, which often is the only way to access, copy and digitize content therein. Under the TEACH Act, only a reasonable and limited portion of a dramatic work may be digitized for use in distance education.

At the time the Committee was formed, inconsistent practices and conflicting guidelines existed with respect to handling streaming media requests. The conflict resulted, in part, on account of there being three separate offices handling the requests and not always communicating with one another what step in the process had been completed. The Committee's first task was to open the communication channels between the three offices. This was accomplished through the creation of a new streaming media request form, which assures a consistent and efficient workflow from the point the request is taken in the Library to the moment the link is posted by a staff person in COLRS in an instructor's Blackboard™ site.

The second task required the provision of accurate and consistent information about what films were available for use, in what quantity clips could be made, and for what purpose a film could be utilized. To this end, Committee members created an annotated resource list for faculty of online videos. The list includes information about films available through Library databases (e.g. Alexander Street Press's Theatre in Video and American History in Video), through personal movie subscription services (e.g. Netflix, iTunes, Amazon), and through local library lending. The Committee advocates the latter by providing a tutorial on how to use WorldCat Local to locate video holdings in the library of a distance education student's hometown. When assisting faculty teaching online in the development of their courses, COLRS staff make this resource list available to faculty so that they can inform students not only that film viewing is required for the course but also the means through which they can acquire access to the films for viewing.

Further, I developed a "viewing rights" coding system for the films in the Library's physical collection. Eventually, every film in the Library's collection will have a rights code of A, B, C, D, or E. Each letter corresponds to a particular viewing right:

A = No restrictions on use (Allowed: Public Performance, In-Classroom, and Digitization for Streaming)
B = Public Performance License and In-Classroom Use Only. No digitization and streaming without prior written permission
C = In-Classroom Use Only. Any other use requires permission.
D = Digitization for Streaming and In-Classroom use Permitted. No public performance without license/permission.
E = Restricted. Any use outside of private individual viewing requires permission.

Effective July 1, 2009, every new film purchased for the Library is assigned a letter code of A, B, C, D, or E. We are also in the process of completing a database of all films purchased prior to July 1 and assigning those titles a viewing rights code. Eventually, we will use the data to create a searchable and sortable list for patrons to use. This will allow them to determine with a simple search what films in our collection are available for public performance or have been licensed for streaming. The viewing rights code is also being entered into our ILS in the Notes field of the bibliographic record for a film. Finally, signs informing patrons of the code system are posted at the circulation desk and near the Library's video collection. Patrons and staff have been appreciative of having this information at their disposal. Faculty frustrations have also diminished in light of being given alternatives instead of being told "no."

Priorities for the Future

The Committee is currently at work on developing seminars and workshops in furtherance of its mission. A member of the Visual Arts department is preparing a workshop on using Creative Commons licenses. The Committee also intends to host an in-depth seminar on the TEACH Act and distance education. Also in the early planning stages is a workshop on effectively using media in teaching. The Committee continues to develop content for an eventual web site and blog dedicated to copyright issues and coordinating the confusion that is occurring at a time the copyright law is evolving.

Conclusion

On college and university campuses across the country, misinformation and misunderstanding about copyright and educational fair use creates frustration and confusion. At UIS, addressing this confusion became a necessity, resulting in the invention of the Copyright Compliance Coordination Committee. The Committee will continue to address the needs of the UIS campus and monitor the legal landscape as the Georgia State case and the Google Books settlement play out in the months and years to come, providing guidance and clearing up confusion along the way.

¹ Cambridge University Press, et al v. Patton et al. For full text of complaint see:

<http://www.publishers.org/main/PressCenter/documents/GSULawsuitcomplaint.pdf>

² 758 F.Supp 1522 (S.D.N.Y. 1991).

³ 99 F.3d 1381 (6th Cir. 1996).

⁴ Warner Brothers Entertainment and J.K. Rowling v. RDR Books et al, 07 Civ 9667 (unpublished, S.D.N.Y. 2008). See <http://cyberlaw.stanford.edu/system/files/Lexicon+Order.pdf> for full text of Judge Patterson's decision.

⁵ Technology, Education, and Copyright Harmonization (TEACH) Act of 2002, Pub. L. No. 107-273, §13301 (Nov. 2, 2002), *incorporated into* H.R. 2215 21st Century Department of Justice Appropriations Authorization Act (2002).

The TEACH Act amended existing copyright law so as to extend rights to those involved in distance education. While online instructors gained the right, under the TEACH Act, to use materials in an online classroom same as they would a physical classroom, their use is, in some instances, more restricted than they would enjoy in a physical classroom.

⁶ See <http://www.collegeportraits.org/IL/UIS/>

⁷ University of Illinois Office of Institutional Research. "Historical Headcount, FTE, and Credit Hours by Level and Mode of Delivery."

http://www.uis.edu/institutionalresearch/databook/documents/HistoricalHC_FTE_CRHR_ByLevelandDeliveryMode.xls (accessed Oct. 25, 2009).

⁸ See <https://edocs.uis.edu/Departments/Otel/www/copyright/C4copyrightOverview.html>

⁹ See <http://library.uis.edu/policy/copyright.pdf>

¹⁰ 1 Pub. L. No. 105-304, 112 Stat. 2860 (Oct. 28, 1998). For full text of the DMCA, see http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=105_cong_public_laws&docid=f:publ304.105.pdf