

Copyright Article Review

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Summary

In the article "Copyright law and distance nursing education," Rhoads & White (2008) summarize copyright law and the application of such to online education. As the authors point out, the US Copyright Act of 1976 was originally intended to address protection of authorship for "literary, musical, dramatic, pantomimes, choreographic, pictorial, graphic, sculptural, motion pictures, sound recordings or architectural works" (Copyright Law of the United States). While this guidance was useful, educators were concerned about the restrictive language, and lack of applicability to distance education. Consequently, legislators passed a subsequent law in 2002: the Technology, Education, and Copyright Harmonization Act, referred to as the TEACH act (Rhoads & White, 2008, p. 39). The purpose of the TEACH act was to provide clarity on copyright issues for educators at nonprofit institutions providing online education. Although this article was written by two faculty members at a School of Nursing, the content is applicable to all nonprofit educational institutions.

Under the TEACH act, there are three conditions that must be met to avoid copyright infringement. These are using the material for educational purposes, for "fair use," and the permission of the copyright holder must be obtained. To meet the requirement of "for educational purposes" the work must be "integral" to the course, not ancillary. The material must be used in a fashion similar to what would occur in a face-to-face teaching environment, and the material must be under the direct supervision of the instructor at all times. Fair use includes four elements. First, the material may not be used for financial gain. The material can

be posted in a password-protected online learning management system under the direct supervision of the instructor for a specified time period, and only accessible to enrolled students. Second, only material relevant to the intended educational learning objectives can be used, and must not be otherwise available to students for purchase. Third, the quantity of material requested to use should be reasonable (e.g., not the majority of the work); generally speaking 10% or less of the work is considered appropriate. Last, the instructor should re-evaluate the need for the material regularly, and copyright permission should be posted along with the material.

The TEACH Act also restricts how audiovisual material may be used including duration of time material can be available (15 days), and restricting students from making their own copy. Again, only a small portion of the original work may be used (e.g., up to 30 seconds, or up to 10% of the work). Last, permission must be received from the copyright holder, which can be quite time-consuming and expensive.

Rhoads and White provide two excellent tables that provide guidance for operationalizing the TEACH Act. One table provides requirements for the instructor, the institution and the information technology workers. The second table defines and provides specific guidance on what instructors can and cannot do for printed material, archived printed material, illustrations and photographs, videos (for viewing and for incorporating into other works), music, computer software, the internet, and television. Rhoads and White conclude by discussing copyright infringement and a few suggestions for minimizing risk to instructors.

Comments

Distance educators want to do the best possible job for their learners, and will want to include a range of multimedia options to enhance teaching. However it is important that educators not inadvertently commit copyright infringement either from ignorance or by choice. On the other hand, assuring compliance with fair use and other requirements of the TEACH Act should not be considered so onerous that educators choose not to even try.

Rhoads and White acknowledge that “the fair use provisions in the Copyright Act are vague and subject to interpretation” (p. 44). They further suggest that educators should look to experts in their own institutions to assure adherence to the Copyright Act and TEACH Act. Librarians are excellent resources, as well as information technology (IT) specialists. IT specialists can be particularly helpful in posting learning objects such that students cannot download, print, or otherwise save copyrighted information. In this author’s opinion, without the assistance of other professionals as described here, the effort needed to adhere to, and obtain copyright, in addition to the cost (which can be quite high) of copyright permission may prove to be an insurmountable barrier to seeking copyright permission.

References:

Copyright Law of the United States | U.S. Copyright Office. (n.d.). Retrieved from <http://copyright.gov/title17/> .

Rhoads, J., & White, C. (2008). Copyright Law and Distance Nursing Education. *Nurse Educator*, 33(1), 39-44.