Copyright

The U.S. Copyright office explains copyright as:

Copyright is a form of protection provided by the laws of the United States (title 17, U.S. Code) to the authors of “original works of authorship,” including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works. Section 106 of the 1976 Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

- To reproduce the work in copies or phonorecords;
- To prepare derivative works based upon the work;
- To distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- To perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works;
- To display the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work; and
- In the case of sound recordings, to perform the work publicly by means of a digital audio transmission.

Fair Use

Title 17, Chapter 1, Section 107 (www.copyright.gov/title17) contains a list of the various purposes for which the reproduction of a particular work may be considered “fair,” such as criticism, comment, news reporting, teaching, scholarship, and research. Section 107 also sets out four factors to be considered in determining whether or not a particular use is fair:

- the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes;
- the nature of the copyrighted work;
- amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- the effect of the use upon the potential market for or value of the copyrighted work.

Oxford defines copyright as “the legal right to print a book, reproduce a picture, record a piece of music, etc."

Before the 1976 Copyright Act was passed, educators and librarians seemed to accept the ambiguous Oxford definition (especially the etc. part) as a general understanding that they could utilize copyrighted works in their classes and research without permission.

“Fair use” was a kind of “gentleman’s agreement” of what was acceptable and unacceptable... People took notice of fair use only when someone blatantly disregarded another’s intellectual property through outright plagiarism, or “pirated” copies through illicit copying (often of substantially less quality) and sold them as if they were from the original creators or publishers (Shuler, 2003).

Subsequent Actions

The Digital Millennium Copyright Act (DMCA) of 1998, a comprehensive reform to U.S. copyright law, made provisions for organizations and individuals who circumvent copyright protection systems, fair use in digital environment, and the liability of online service providers (including details on safe harbors, damages, and “notice of takedown” practices). The DMCA did not include distance education provisions and previous agreements failed with regard to online learning (Talab, 2003).

In November 2002, the “Technology, Education and Copyright Harmonization Act” (the TEACH Act) was signed into law. It amended copyright law to permit professors, under certain circumstances, to use some of the same copyrighted works in online courses that they have used in traditional ones, free of charge and without having to ask permission first (Carnevale, 2003). The Congress recognizes the importance of distance education, the significance of digital media, and the need to resolve copyright clashes (American Library Association, 2003).

Summary

As with the Oxford dictionary’s definition of copyright, the TEACH Act is open-ended.

According to Carnevale (2003), one of the laws most problematic requirements is that instructors make “reasonable” efforts to prevent students’ disseminating the audio or video clips to others. A key issue for many institutions is that the TEACH Act doesn’t define “reasonable”. Institutions’ and college administrators’ opinions
vary and they rely heavily on lawyers and copyright experts to decipher what is “reasonable” and if they are in compliance with the copyright laws.

The writer is confident that her organization is copyright compliant. The organization is for-profit and therefore is not covered by the TEACH Act. All trainers, instructional designers, and IT personnel are trained on copyright issues and pay licensing and fees wherever warranted (i.e. off-the-shelf programs, etc.).

The writer believes that until the number of distance educators equal the number of private industry represented during the legislation process, the focus will remain on the private good. In addition, copyright laws will continue to race against the ever-fit, ever-emerging, premiere athlete called technology. As technology accepts its gold medal, copyright laws will collect its silver and distance education will tentatively bring up the rear with a bronze.

References


