What faculty know about designing online materials in compliance with current U.S. copyright and fair use laws

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What Faculty Know About Designing Online Materials

In Compliance With Current U.S. Copyright And Fair Use Laws

by

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What Faculty Know about Designing Online Materials in Compliance with Current U.S. Copyright and Fair Use Laws

Phyllis C. Sweeney

ABSTRACT

Digital technology has vastly increased the ability of individuals to copy, produce and distribute information, making the behavior of individuals a far more significant factor in the enforcement of copyright and fair use laws than in the past. This research investigates the resources used by university faculty and their knowledge of fair use regarding web-based course materials. Specifically, the research A) identifies prevailing trends in faculty use of resource materials in the development of web-based courses including digital images, text, video and sound; B) determines how faculty members have gained and applied their fair use knowledge; and C) interprets any differences based on demographic data.

To obtain data for this study, the researcher designed, developed and posted online an IRB-approved survey instrument. In addition, the researcher used an online focus group within Blackboard to obtain qualitative data to assist in guiding interpretation of the quantitative results from the survey.

Quantitative findings indicated that aside from the small percentage of faculty members who have had web design training or copyright training, very few are aware of this institution’s specific copyright and fair use policies. Qualitatively, this study pointed to the themes of lack of training, a desire to comply, and urgency in designing online course materials in time for the start of a new semester as a major decision-making factor in whether to include/exclude copyrighted content. Despite these difficulties, most focus
group participants reported they knew the appropriate person or department to ask for guidance, pointing to the role of deterrence theory in their decision-making.
CHAPTER 1 – INTRODUCTION

“The institution is responsible for the technological delivery of the course. Faculty members who teach through distance education technologies are responsible for making certain that they have sufficient technical skills to present their subject matter and related material effectively, and, when necessary, should have access to and consult with technical support personnel. The teacher, nevertheless, has the final responsibility for the content and presentation of the course.”

...Andrew Feenberg, 1999

The technology of digital information has vastly increased the ability of individuals to copy, produce and distribute information over the Internet, making the behavior of individuals a far more significant factor in the enforcement of online copyright and fair use laws than in the past. These laws have recently changed and, as a result, those who develop distance learning via the Internet should be aware of their effect on web-based course materials.

Research on faculty resources for developing online materials and understanding of copyright and fair use at the university/college level is nearly nonexistent. Janis Bruwelheide of Montana State University-Bozeman acknowledges that current research may be inadequate since no definitive checklist of rights that must be acquired, cleared or considered exists (Bruwelheide, 1999). The national Conference on Fair Use (CONFU) chaired by Assistant Secretary of Commerce and Commissioner of Patents and Trademarks Bruce A. Lehman, attempted to establish a checklist or guidelines in 1998, but was unsuccessful at reaching a conclusion. However, several online checklists for
applying the new TEACH Act guidelines are available, such as one located at http://www.lib.ncsu.edu/scc/legislative/teachkit/checklist.pdf.

Despite the lack of research on educators’ knowledge of copyright and fair use laws, Chris Werry (2001) describes a “mad rush” by universities, colleges and corporations for educators to develop online courses, virtual universities, portals and courseware. To fulfill such an agenda, Werry says that many universities and colleges encourage the use of web-based course content for several reasons, such as:

- Educational institutions have invested heavily in Internet infrastructure and technology for faculty, staff and student use;
- Post-secondary schools wish to increase (or at least not diminish) student body size by offering more convenient courses for distance learners to compete with other educational institutions; and
- Institutions may derive additional income from sales of online content.

In concurrence with Werry, the National Center for Education Statistics (NCES, 2002) reports that enrollments, course offerings, and availability of distance education increased rapidly during the 1990s. NCES (2002) reported that the percentage of 2- and 4-year institutions offering distance education classes rose from 33 to 44 percent between fall 1995 and 1997, and predicted that “one-fifth of U.S. 2- and 4-year institutions also planned to start offering distance education courses between 1998 and 2001.” Their prediction was more than exceeded when Telecampus, an online course directory, and C. Thornton writing for PC World found that more than 500,000 courses were available by 2003, in some form on the Internet, with 2.2 million students taking at least one college course through this media (Lundgren & Garrett, 2003). According to a 1999 report from
the Institute for Higher Education, 33 percent of all post-secondary classes used Internet resources as part of the syllabus in 1998, compared to 25 percent in 1997 and 15 percent in 1996.

The U.S. Department of Education’s 1999 National Study of Postsecondary Faculty (NCES, 2002) determined that online courses are offered in business; education; engineering and computer sciences; fine arts; health and human services; humanities; life sciences; natural/physical sciences and mathematics; social sciences and vocational fields. The NCES study indicates that the purpose of using web sites for students was to make available general information, homework, exams/exercises, test results and to link students to others’ web pages.

By conforming to the wishes of universities seeking to increase the use of online courses and digital tools, educators face legal and ethical challenges from copyright and fair use laws. Copying, digitizing, uploading, transmitting and many other web-based uses of materials for distance education are some of the challenges overcome by technology. Yet when information is stored in electronic form, it is subject to the same legal and ethical standards as print-based information and tangible property. Passage of the TEACH Act (S.487 and part of H.R. 2215) set new standards that requires educators to be not just aware of current copyright and fair use laws, but also to apply the rules ethically. Research for this dissertation determined what postsecondary faculty members know about copyright and fair use policies as they design online course materials to be used by students enrolled in for-credit classes.
Legal Challenges of Online Technology

Conventional 1976 U.S. copyright law (doctrine codified at 17 U.S.C. § 101 through 122) was originally meant to regulate copying, distribution and other uses of tangible materials such as books, journals, plays, artworks, sheet and recorded music, etc. Copies of a tangible object can result in deterioration or distortion of the original work. For example, photocopying pages from a book makes images that look significantly different from the original work and, in the process of flattening the book’s pages in a copier, can damage the original by splitting the binding. Copies of photocopies further deteriorate from the appearance of the original work. Distributing photocopies without a license denies the copyright owner of income derived from the sale of original work and also denies the person receiving a photocopy the experience of using the original work as the copyright owner intended.

On the other hand, copies of intangible digital materials such as web pages or word processed files are identical from the original to the copy. Therefore, copies of digital work do not result in deterioration or distortion of the original work and thus, copyright ownership is more difficult to establish and copies are more difficult to detect (Lessig, 1999). According to Lawrence Lessig (1999, p. 124), “Subject to fair use exceptions, copyright is protected to the extent that laws (and norms) support it, and it is threatened to the extent that technology [intangible materials] makes it easy to copy and distribute.”

As part of the 1976 U.S. copyright law, Title 17, Section 107, known as “Limitations on exclusive rights: Fair use,” was designed to exempt educators who wish to copy, distribute and otherwise use others’ work for educational purposes. This section of the
law has undergone several recent changes that affect how educators apply fair use to their web-based course materials.

The concept of fair use sometimes creates more confusion for intangible works than the original law as applied to tangible materials. Straub and Collins (1990) remind us that the evolving legal environment has become a patchwork of new and reapplied copyright laws that offer little clarity on the underlying issues of fair use: a) what materials are allowed, b) how much of each material can be used, and c) for how long can it be used.

Portions of the U.S. Copyright law were modified in October 1998, with passage of the Digital Millennium Copyright Act (DMCA at §110(1)), which addresses distance education exemptions that deal only with closed circuit television for delivery of a live classroom to remotely located classrooms (Lutzker, 2002), but ignores text, images, sound, movies, etc., that are commonly used in web-based courses. A second example of “patch working” is the World Intellectual Property Organization (WIPO) Copyright Treaties which provide improved copyright protection only on software application programs.

Of greater significance to this dissertation was the latest “patch,” the TEACH Act (§110(2) of Title 17, U.S. Copyright law). Signed into law by President George W. Bush on November 2, 2002, the “Technology Education and Copyright Harmonization Act,” S.487 and part of H.R. 2215, significantly benefits online distance education by extending the copyright exemption for materials used by faculty in traditional university courses, to students taking courses at a distance through any technological means. Nothing in the TEACH Act is intended to limit or otherwise to alter the scope of existing
fair use doctrine as applied to web-based content. As the U.S. Copyright Office Register’s Report explains:

\[\text{\textit{Id. at xvi. Fair use is a critical part of the distance education landscape. Not only instructional performances and displays, but also other educational uses of works, such as the provision of supplementary materials or student downloading of course materials, will continue to be subject to the fair use doctrine. Fair use could apply as well to instructional transmissions not covered by the changes to Section 110(2). Thus, for example, the performance of more than a limited portion of a dramatic work in a distance education program might qualify as fair use in appropriate circumstances.}}\]

The TEACH Act does allow distance educators to use movies, video and recorded dramatic performances for web-based distance learners. This Act expands considerably on the older exemption that allowed only “non-dramatic literary or musical works” (Welsch, 2001). To enjoy the TEACH Act’s advantages, accredited, nonprofit colleges, universities and other qualified educational institutions will need to meet the new law’s rigorous requirements, which require that each educational institution undertake numerous procedures and involve the active participation of their educators, staff and students (Lutzker, 2002).

While educators are encouraged by their institutions to increase online materials for use with students, many may not be aware of changes brought by the TEACH Act, their institution’s Internet policies, or their own department’s guides for educational use of materials harvested from other online, web-based authors, artists and musicians. There
has been no definitive or widely recognized formal research on faculty awareness of copyright or fair use, only circumstantial evidence that most people do not have an adequate understanding about the law as it applies to digital intellectual property (CIPREII, 2000).

Universities publish copyright policies and offer training in proper application of fair use. Examples include:

- University of Central Florida’s Information Technology Ethical Use Policy (6C7-4.037) located online at http://www.ucf.edu/provost/handbook/chapter0606.html,
- University of Florida’s Information Technology Ethical Use Policy online at http://pirate.ifas.ufl.edu/RESOURCE.HTM#p2iteu, and

At the institution where research for this dissertation was conducted, several departments offer training to faculty and graduate teaching assistants, including web page design, use of the library’s electronic resources in course materials and teaching with Microsoft PowerPoint. Some of these workshops include a short discussion with a specialist on the university’s copyright and fair use policies. There is no workshop offered that specifically covers copyright and fair use procedures. Research for this dissertation was designed to determine whether the lack of specific copyright and fair use training lead faculty members to request and offer unnecessary payment for copyrighted materials or to possibly commit infringement.
Six copyright cases were resolved in 2001, the most visible of which was Tasini v. The New York Times Co., 93 Civ. 8678 (SS), S.D.N.Y. This case involved several freelance writers who sued and won the right to prohibit The New York Times from copying and selling their work to Lexis/Nexis and other electronic distributors in electronic databases used by educational institutions. In a second famous copyright case, Peggy Lee successfully sued Walt Disney, when Disney reproduced her voice from the motion picture “The Lady and the Tramp” onto videocassettes. Although videos were not in existence in 1952 when the movie was originally released, it was found that Peggy Lee was entitled to royalties for any “transcriptions” of her voice, which included videocassettes. Ms. Lee was awarded $2.3 million (National Music Publishers’ Association, Inc., 2001). Violation of copyright laws can be expensive.

Infringement of a valid copyright is the threshold requirement for both criminal and civil copyright infringement cases and could adversely affect an institution financially or through negative publicity and liability. For example, if infringement is proven through showings of access, copying and substantial similarity, “willfulness” (meaning reckless and intentional activity) can lead to potential statutory damages of up to $100,000 for each infringement (Title 17, USC).

**Ethical Challenges of Online Technology**

In designing online course content, conformance with norms, laws and enforcement of copyright laws and policies is critical. Deviation from copyright laws and policies is conceived as “negative” practice – something unethical. Ethics in its simplest form, deals with right and wrong, not necessarily with what is legal. The Internet Encyclopedia of
Philosophy defines ethics as moral philosophy and involves systematizing, defending, and recommending concepts of right and wrong behavior (IEP, 2003).

As examined more fully in the literature review, ethics theory shows that ordinary citizens have ethical responsibilities, but that professionals such as educators have extra pressures to comply ethically with the law. Much of ethics theory is about broadening the awareness of the effect professional decisions can have – not just on students, other faculty and staff members, and the institution, but on the broader world of communities and the environment.

Like ethics theory, deterrence theory is rooted in classical sociological theory. Deterrence theory suggests reducing the probability of deviance through some form of individual punishment such as fines and denial of tenure. Deterrence strategies focus on future behaviors, preventing an individual from wrongdoing (Keel, 1997). The goal of deterrence is the internalization of harm the guilty party has caused (Cooter, 2000).

According to Scott Sagan, “Deterrence works when expected costs are higher than expected gains” (Sagan, 2000, ¶ 2).

Goals of Investigation

This dissertation investigated the awareness of university faculty toward current fair use regarding web-based course materials. Specifically, the goals were to:

- Identify educators’ knowledge of copyright and fair use laws as they apply to web-based course materials, including digital text, images/video and sound created by others;
- Determine the source(s) of copyright information on which faculty members’ decision to include others’ readily available online text, images/video or sound is
based. As part of this research question, the researcher attempted to find what
deters/does not deter faculty members from violating copyright and fair use
guidelines; and

- Interpret the differences based on gender, length of service, college/department,
  academic rank, tenure and number of online classes/sections taught.

**Research Questions**

1. Do misperceptions for developing online course content as it relates to
   federal and state copyright and fair use laws, vary across post-secondary
   educators with regard to department, academic rank, gender, tenure or length
   of service?

2. Are post-secondary educators deterred from infringing existing copyright and
   fair use policies in developing their online course materials? If so, what is the
   decision-making process for deterrence?

**Assumptions**

Assumptions related to this study included:

1. Subjects have developed at least one web page used as course material.

2. An online survey format is appropriate for obtaining data related to behaviors
   associated with developing online course materials.

3. An online focus group format is an appropriate tool for obtaining data related
   to behaviors associated with developing online course materials.

4. Individuals invited to participate in an online survey or online focus group
   have access to the World Wide Web.
5. Respondents who respond to an online survey or online focus group will report their data accurately.

Limitations of this Study
Factors that lead to limitations in this study’s findings included:

1. Findings may prevent the generalization of the study to all online course educators.
   a. Institutions have different policies regarding length of time and amount of material may be used without obtaining copyright licenses.
   b. Online survey or focus group respondents may be different from those who do not participate.
   c. Volunteer respondents may be different from those who do not participate.
   d. Subjects may or may not have received formal copyright and fair use training from the same source.

2. Participation in an online focus group may be biased in favor of those subjects who are faster/better typists.

Definitions

BLACKBOARD®. This is a web-based environment for online teaching and learning. This software product is designed to complement traditional instruction or distance learning through content management/sharing, assessment management, grade book and assignment management, collaboration and communication, etc. Blackboard® offers synchronous and asynchronous collaboration tools. A similar product is WebCT®.

COPYRIGHT. The United States copyright law is contained in chapters 1 through 8 and 10 through 12 of title 17 of the United States Code. The Copyright Act of 1976,
which provides the basic framework for the current copyright law, was enacted on October 19, 1976, as Pub. L. No. 94-553, 90 Stat. 2541. Infringement includes the unauthorized or unlicensed copying of a work subject to copyright (U.S. Copyright Office Circular 92, 2001).

**COMPUTER ETHICS.** Chair of the APA Committee on Philosophy and Computers in 1997, and professor of philosophy at Dartmouth College, James H. Moor is a primary figure in the area of computer ethics. His article, “What is Computer Ethics?” is widely reprinted and regarded as a milestone for the study of computer ethics. In this article, Moor (1985) describes computer ethics as “the analysis of the nature and social impact of computer technology and the corresponding formulation and justification of policies for the ethical use of such technology.” To Moor, computer ethics is a field concerned with “policy vacuums” and “conceptual muddles” regarding the social and ethical use of information technology:

> “Either no policies for conduct in these situations exist or existing policies seem inadequate. A central task of computer ethics is to determine what we should do in such cases, i.e., to formulate policies to guide our actions. Computer ethics includes consideration of both personal and social policies for the ethical use of computer technology” (Moor, 1985, 266).

**DETERRENCE.** A means to dissuade someone from taking an action through the threat of punishment; deterrence works when expected costs are higher than expected gains (Sagan, 2000, ¶ 1).

**DIGITAL MILLENNIUM COPYRIGHT ACT OF 1998 (DMCA).** Key among the topics included in the DMCA are provisions concerning the circumvention of copyright protection systems, fair use in a digital environment, and online service provider (OSP)
liability, including details on safe harbors, damages, and blocking access to materials practices (Educause, no date). This Act was signed into law by President William J. Clinton on October 18, 1998.

**FAIR USE.** The main purpose of copyright is to encourage creation of new works as well as giving authors the exclusive right to reproduce and distribute their works. Exceptions to this are found in Sections 107 through 118 of the Copyright Act (Title 17, U.S. Code). Known as fair use when applied under certain conditions including criticism, comment, news reporting, teaching – including multiple copies for classroom use, scholarship, and research, four factors must be considered in determining whether use of a copyrighted work is “fair.” The factors are:

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

2. the nature of the copyrighted work;

3. the amount of the portion used in relation to the copyrighted work and the length of time used; and

4. the effect of the use upon the potential market for or value of the copyrighted work (FL 102, 1999)

**INTELLECTUAL PROPERTY.** Laurence R. Hefter and Robert D. Litowitz, partners in Finnegan, Henderson, Farabow, Garrett & Dunner, one of the largest intellectual property law firms in the US, defines IP as sharing many of the characteristics associated with real and personal property. For example, intellectual property is an asset, and as such it can be bought, sold, licensed, exchanged, or gratuitously given away like any other form of property. Further, the intellectual property owner has the right to prevent the
unauthorized use or sale of the property. The most noticeable difference between intellectual property and other forms of property, however, is that intellectual property is intangible, that is, it cannot be defined or identified by its own physical parameters. It must be expressed in some discernible way to be protectable (Hefter & Litowitz, 1997).

**ONLINE FOCUS GROUP.** A qualitative approach to dynamically draw information from small groups of participants over a short term. They are useful for “fleshing out ideas,” refining hypotheses, and capturing the subtleties and nuances of findings (Doherty, 2002). The unit of analysis is the group rather than the individual. Online focus group tools are an electronic means of collecting data for testing, invoked by an individual at his/her own terminal. The tool allows users to type or retype responses (Rojo, 1995). Electronically gathering data in this fashion solve two problems: 1) reduces the high costs of reaching a target group in face-to-face meetings; and 2) allows a more “anonymous” response to questions since there is no bias based on gender, size, age or nationality.

**ONLINE RESEARCH.** Online research is research conducted over the Internet, including electronic mail surveys, Web-browser-based surveys and concept tests, on-line interviews and focus groups (Miller and Dickson, 2001).

CHAPTER 2 – LITERATURE REVIEW

This literature review first examines the body of research on fair use guidelines and policies used by educational institutions. Next, a synopsis of ethics, professional ethics and deterrence theories points to a framework in which moral values were applied to post-secondary educators.

Fair Use Guidelines

The doctrine of fair use, codified under the Copyright Act § 107, is a means of permitting educators to enjoy a limited amount of copying and distribution of copyrighted printed material. Following is the Fair Use section of the Copyright Act:

“Notwithstanding the provisions of § 106 and 106A of the Copyright Act (Title 17), the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified in that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.

“In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include –

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

4. the effect of the use upon the potential market for or value of the copyrighted work.

“The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors” (Copyright Act of 1976).

At the time of this research, statutory damages for copyright and fair use infringement ranged from $500 to $20,000 per act of infringement (Radack, 1998). If a court found that the defendant acted willfully, the court could increase the damages to a maximum of $100,000 per act of infringement. Finally, the court could also order the defendant to pay the plaintiff’s attorney’s fees and court costs (Radack, 1998).

Although U.S. courts have considered and ruled on fair use many times, no real definition of the concept has ever emerged (U.S. Copyright Office Circular 21, 1988). Fair use is complex and intentionally vague (Sinofsky, 1982). For example, fair use allows an educator to copy and distribute a “small” portion of scholarly print materials to use as handouts for students in a classroom, and that educator may continue to use those handouts over a “brief” period of time. Neither “small” nor “brief” is well defined within the Copyright Act itself. Indeed, since the doctrine [of fair use] is an equitable rule of reason, no generally applicable definition is possible, and each case raising the question must be decided on its own facts (U.S. Copyright Office, 1988).

Many sets of guidelines for applying fair use standards were created by policy makers within the government, at educational institutions, and at conferences of interested parties such as librarians, publishers and authors. Fair use guidelines do not
represent a legal document, nor are they legally binding. However, the more one exceeds these guidelines, the greater the risk that courts may find that fair use does not apply (Crews, 2001).

Various sets of fair use guidelines have been put forth, differing among authors and over time (Nayer, 2002, Bruwelheide, 1999):

- A set of guidelines (Appendix A) was agreed upon in 1976, by the Ad Hoc Committee on Copyright Law Revision, the Authors League of America and the Association of American Publishers, Inc. These guidelines regard only tangible property and may or may not be successfully applied to intangible, web-based works based on more recent guideline proposals as indicated next.

- The 1977 Conference on Fair Use (CONFU) that was convened by the Commissioner of Patents and Trademarks, attempted to develop fair use guidelines in areas of interlibrary loan, electronic reserves, digital images and distance learning. By the third and final meeting of CONFU, the Commissioner declared that negotiations failed to achieve a consensus (U.S. Patent and Trademark Office, 1998). Additional examples of alternative CONFU guidelines are shown at the end of Appendix A.

- Circular 21 produced in 1988 by the U.S. Copyright Office reports that “guidelines that indicate specific types and amounts of copying and use limits [of digital works] have been suggested, discussed and revised many times by both the House of Representatives and the Senate, with no definitive conclusions to date” (U.S. Copyright Office, 1988).
IFLA, the International Association of Libraries Associations and Institutions, commented on the World Intellectual Property Organization (WIPO) copyright treaty of 1996, a result of the Berne Convention:

12. Having to ask permission every time to disseminate or use a copyright work, or having to pay for every piece of copyright information would frustrate society as well as stifling creativity, economic progress, world culture and learning. For example, if permission and/or payment is required every time a work is even accessed, (e.g., viewed on a computer screen) the role of the library to be society’s collectors and disseminators of knowledge will be destroyed (IFLA, 1996).

**Institutional Policies on Fair Use**

To assist educators with fair use, universities have developed their own guidelines and policies that are especially relevant for faculty using web-based course content.

Law Professor Kenneth D. Crews is a known authority on digital copyright and fair use laws. His 1993 survey of copyright policies at 98 American research universities reveals a variety of ways in which institutions have responded to the conflicting goals of copyright policies: avoiding infringements while promoting fair use for teaching and research (October 1993). In the Ohio State Law Journal (1996), Crews wrote that early fair use guidelines failed to reflect accurately the law to embody workable standards, yet have persisted as models applied to digital technology. He argues that the newest institutional guidelines perpetuate deficiencies of the past and create new hazards for copyright owners and educators, such as transmission of works normally allowed in face-to-face classrooms when displayed outside the classroom via the Internet. A related issue is that fair use permits transmission “primarily” for students who are unable to attend in the classroom because of their “disabilities or other special circumstances.” In response,
Crews asks, “Why are we offering distance learning programs? If the reason is simply for
the ease and convenience of students, that may not be a ‘special circumstance’ which
prevents their attendance. If the reason is because students are unable—because of work,
family obligations, or personal conditions—to attend class at the appointed time, then we
have a good case for fair use” (Crews, 1995).

Some educational institutions tend toward a conservative approach to the guidelines,
meaning that where fair use is vague, institutions prefer to set stricter policies. For
example, the university that was studied in this dissertation allowed fair use of
copyrighted material for a 2-semester period, rather than for two years. A two-year
guideline derived from the CONFU conference was adopted by The Pennsylvania State
University (http://www.libraries.psu.edu/mtss/fairuse/guidelines.html), the University of
Texas (http://www.utsystem.edu/ogc/intellectualproperty/ccmcguid.htm) and the
University of Florida (http://pirate.ifas.ufl.edu/update/media.html), among others. On the
other hand, Indiana University’s fair use policy
(http://www.indiana.edu/%7Eufc/circulars/97-98/U16-98.htm) is more flexible, with no
specific amounts of time or content rules. It states:

“In an attempt to clarify the meaning of fair use for common
situations, various private parties have negotiated “guidelines,”
but those externally developed guidelines are often inappropriate
for the realistic application of fair use to higher education. Such
guidelines are too often an unduly narrow or rigid definition of fair
use, and they usually impose additional restrictions and conditions
that are not part of the law. No such guideline has been read into
the law by Congress or the courts, and the guidelines are not
binding. Fair use must be determined according to the
circumstances of each situation.

To put details into the policy itself would tend to freeze the doctrine
of fair use at a time when it is in continuous transition. Thus, the
policy remains flexible to reflect changing needs and the dynamic
nature of fair-use law. The policy also remains flexible to address the growing innovations of our teaching and research” (Indiana University Faculty Council, 1997).

Ethics

In the previous section, the researcher determined the legal stand of university policies on copyright and fair use. This section examines the general ethical and moral theories that would apply to “rightness” or “wrongness” of infringing on copyright and fair use law.

Ethics is often viewed based on the structure of activity and its results, i.e., a person performs an action that leads to certain results or consequences. Virtue, Deontological and Consequentialist theories most aptly apply to circumstances such as those researched for this dissertation. **Virtue** theory focuses on the agent and issues of character and integrity. **Deontological** theory attempts to evaluate actions as right or wrong. **Consequentialist** theory focuses on the external results of an action.

Aristotle’s (384-322 B.C.) Virtue (Eudemonism) theory argues that in the scope of human activity, we usually understand virtuous behavior better than what particular actions are right or what consequences are good. Virtue theory is applicable to this dissertation because it helps determine the character of the subjects under study. A Pennsylvania State University College of Engineering team of faculty and students of Ethics in Engineering proposes some further thoughts on virtue theory:

- Promotes human flourishing
- Virtues are those strengths of character that enable us to flourish
- The virtuous person has practical wisdom, the ability to know when and how best to apply these various moral perspectives. Rather than consulting a
formula or algorithm to determine the single right action, the virtuous person uses her judgment and acts on her best character traits. (PSU, 2001)

Deontological (Duty) theory focuses on the action and the intention behind it, and claims that some actions are inherently wrong, and cannot be justified, for example by predicted good consequences that will result from them. Deontological theory is important to understanding why the subjects under study in this dissertation may believe they have successfully applied copyright and fair use to their online course materials. Immanuel Kant (1724-1804) is the most prominent holder of this theory. Kant’s categorical imperative, “an act is right if and only if the agent willing it could at the same time will that the maxim of the act be a universal law,” (Almeder 58). Using Kant’s ethical reasoning, a rule that commands action is independent of the desired end, including happiness. We act out of respect for the basic moral law when we seek to conform our behavior to that law simply because what the law prescribes is good, even if we have no inclination at all to do what the law prescribes (Angelich, 2001). The primary domain of this theory is action in terms of “What should I do?”

Similar to the previous theory, Jeremy Bentham (1748-1832) and John Stuart Mill (1806-1873) further discuss “What should I do?” and “the ends justifies the means” actions. Consequentialist (Utilitarianism) theory can be applied in cost-benefit analyses of the subjects under study in this dissertation. The principle is to maximize benefits over harms for the greatest number of those affected (PSU, 2001).

In her investigation into moral development and ethical decision-making, Nancy Willard (email to list, Feb. 2003) expounded upon theories of M. Nisan (1991) and A. Bandura. Willard says, “Nisan’s Limited Acceptable Morality theory explains that we all
have a set of principles about what we think is right behavior and wrong behavior. The boundaries of this vary by individual, but we are all willing to waiver from these boundaries in certain circumstances. Bandura’s Social Learning theory says we learn our behavior from our environment, significant others or role models by observing their behavior. Bandura studied the ways in which people rationalize behavior that is ‘immoral’ or ‘unethical.’ Based on these two theories, generally very ethical people will rationalize when engaging in behavior that is considered to be inappropriate but are just slightly outside of the boundaries. Willard believes that we should note the pattern of the rationalizations: others are engaging in the same activity; lack of fear of detection and punishment; significant expense; benefit to others (or self) by engaging in the activity (Willard, 2003). She says three factors appear to support transgression:

- The transgression will not cause any perceptible harm;
- The harm is perceptible but small in comparison with the personal advantage gained; or
- The harm is to the system, and no specific person sustains a loss (Willard, 1997)

**Professional Ethics**

In addition to general ethics theories, we next look at the ethical and moral development and decision-making ethics of educators who use online course materials.

Compliance with fair use standards is based on processes by which human beings and educational institutions develop the capacity and inclination to behave in a manner that respects the rights of others and society. Educators’ capacity and inclination to behave in a responsible manner is shown by J.R. Rest (1994) and others as an overall
framework for making responsible decisions and engaging in responsible behavior. Rest depicts his framework as a four-component model of ethics that includes:

- Moral sensitivity – interpreting the situation.
- Moral judgment – judging which action is morally right/wrong.
- Moral motivation – prioritizing moral values relative to other values.
- Moral character – having courage and persistence, overcoming distractions, and implementing skills.

According to John Martin Rich (1984), Hugh Sackett (1993), and Marcia Lynn Whicker and Jennie Jacobs Kronenfeld (1994), an educator is considered a professional, charged with a defensible and properly enforced code of ethics and morals. Rich (1984) assesses practices in higher education based on ethical grounds for decision-making and the likely educational consequences of the decision. While Rich’s work does not specifically address fair use and copyright standards for online materials, we can relate his writing to implementing and enforcing policies on these issues. He provides us three functions of professional ethics (p. 6-7):

1. An enforced professional code of ethics ensures clients that professional services will be rendered in accordance with reasonably high standards and acceptable moral conduct;

2. Since the professional [educator] is rendering a public service, ethical codes assure the public at large that the professional is serving the public interest and should continue to enjoy public trust, confidence and support; and
3. An institution should provide a code of uniform rules and behavioral standards by means of which members of the profession are informed of acceptable behavior in order that their conduct can be properly regulated (Rich, 1984).

The educational institution is the body that should provide the code of uniform rules and behavioral standards, according to Sockett (1993), despite the fact that an institution may itself lack integrity, especially if members do not invest them with their own ideals and values.

Whicker and Kronenfeld (1994) also see an overlap of ethics, institutional policies and the law. They illustrate the implications of ethical dilemmas by defining a number of characteristics including emotional trauma for participants, occurrence in environments with rapidly changing norms, and, particularly useful to this dissertation, administrative procedures for dealing with ethical dilemmas may be weak or poorly defined. Their review claims that bureaucratic rules are often developed in response to specific situations – in settings where few issues have been debated or anticipated, administrative procedures for dealing with ethical dilemmas may be vague and allow misinterpretations.

**Deterrence Theory**

In addition to general and professional ethical standards, we look next at several theories that help us understand under what conditions educators would be willing to transgress (or not) with established codes of ethics. The actions under study involved copying text, images, sounds, animations and video from someone else’s web page without obtaining copyright permission or paying copyright fees, which may never result in some form of punishment.
In a lecture given at Stanford University in 2000, Scott Sagan outlines the requirements of Deterrence theory. The requirements are:

1. The capability to inflict unacceptable cost.
2. The threat of deterrence must be communicated.
3. Threats have to come from a credible source and be believable.
4. Individuals are rational actors who weigh the pros and cons before committing a deviant act (Sagan, 2000; Merton, 1957).

In deterrence theory, the key concept is that people will engage in criminal activities if they have no fear of apprehension and punishment (Keel, 1997). Robert O. Keel (1977) and other criminal justice researchers find that the threat of punishment – financial, social or physical – is central to contemporary criminal justice policy and carries over into milder forms of law violations such as breaking copyright policies.

Sylvia Mendes and Michael McDonald (2001) reviewed 39 analyses in 33 published studies to find that empty threats of punishment undermine the deterrence effect. Gains from unpunished crimes simply outweigh deterrence and severity is often found to be of little consequence. Their research concludes that deterrence must be treated as a package composed of three elements: arrest, conviction and punishment.

In studying business management decisions, Diane Vaughn (1998) challenges the rational choice/deterrence model of social control. In her analysis of NASA’s Challenger disastrous decisions, she argues that these choices suggest a need to reorient regulatory activity toward the social context of decision making. Describing organizations as “amoral calculators,” she believes that organizations are driven by pressures from the competitive environment to violate the law to attain desired organizational goals unless
the anticipated legal penalties (the expected costs weighed against the probability of delaying or avoiding them) exceed additional benefits the firm could gain by violation. She further claims that the amoral calculator model also has wide acceptance as an explanation for the misconduct of other types of organizations that violate laws, administrative rules and regulations. Based on Vaughn’s rationale, this dissertation may find that subjects report willingness to infringe on copyright and fair use due to pressures from the university to produce online materials faster than the university expects them to produce other forms of published work.

Matthew Scheider (2001) assumes that individuals take their employer’s policy into account when deciding whether to engage in criminal behavior. The deterrence doctrine and the rational choice principles on which it is based, also suggest to Scheider the crucial notion that individuals will alter perceptions in light of new information (Tuck and Riley 1986). When presented with accurate information such as changes brought about by the TEACH Act, rationally calculating educators presumably will interpret the certainty of punishment “similarly and accurately” (Cornish and Clarke 1986; Geerken and Gove 1975). If new information is perceived to be a true representation of reality, then changes in interpretation should be nearly universal. Scheider’s study may be understood to mean that, given additional training in a university’s copyright policies, faculty members can change their behavior (avoid violating fair use guidelines).

Steven Levitt’s research (1998) appears to agree with Scheider when he suggests that criminals may be poorly informed about the likelihood of detection, or may be overly optimistic about their own criminal abilities. Assuming that faculty members commit multiple copyright offenses while designing online course materials, the response of one
crime to changes in the expected punishment for a second crime sheds light on the relative importance of deterrence. For example, United States copyright courts tend to issue low fines for first-time offenders and considerably higher fines for repeat offenders.

General deterrence theory has been extended into several additional theories, three of which will be reviewed here: Routine Activities Theory by Felson and Cohen, Differential Association Theory by Sutherland, and Prospect Theory by Kahneman and Tversky.

**Routine Activities Theory**

Felson and Cohen (1979) focus on the *situation* and *situational analysis*. This theory assumes that everyone is capable of rationalizing crime. It states that criminal offenses are related to the nature of everyday patterns of social interaction with these necessary factors:

1. A motivated offender  
2. A suitable target that offers some form of reward, with ease of access  
3. Absence of authority

Acknowledging that crime cannot be eliminated, Felson and Cohen suggest that solutions to crime are to reduce opportunities for crime and increase the role of formal or informal guardians. As faculty members are motivated by administration to increase online course materials, they find in the easy access nature of the World Wide Web suitable targets. Lacking the authority of an online course material “inspector,” violators within the faculty may feel free to use whatever text, images, etc., they find that seems suitable.
**Differential Association Theory**

Sutherland and Cressey (1978) developed differential association theory for those who commit crime or those who are law-abiding through learned behavior in interaction with other persons. Differential association theory is similar to L.S. Vigotsky’s social cognition learning model which asserts that culture is the prime determinant of individual development (1934). When criminal behavior is learned through culture, the learning includes techniques of committing the crime, which are sometimes very complicated, sometimes simple, and the specific direction of motives, drives, rationalizations and attitudes. According to Sutherland, the process of learning criminal behavior by association with criminal and anti-criminal patterns involves all of the mechanisms that are involved in any other learning. Association with other educators, some who violate the law and others who do not, is favorable to copyright and fair use law violation, and may be attributed to an “everyone does it and gets away with it” mentality.

**Prospect Theory**

Prospect theory is an empirical model of decision-making choice initially developed by Kahneman and Tversky (1979). A cognitive alternative to deterrence theory, this theory treats preferences as a function of “decision weights,” and it assumes that these weights do not always correspond to probabilities. Specifically, prospect theory postulates that decision weights tend to overweight small probabilities and underweight moderate and high probabilities. While this theory allows for the general definition of deterrence theory, it seems to identify additional conditions for failure of deterrence: In prospect theory, a problem can be presented as a gain (200 of 600 threatened people will be saved) or as a loss (400 of 600 threatened people will die). In the first case, people tend to adopt a gain frame generally leading to risk-aversion and in the latter, people tend
to adopt a loss frame, generally leading to risk-seeking behavior (Kahneman and Tversky, 1979).

Faculty members, as Feenberg (1999) reminds us, are the decision-makers and have the choice of what text, images, animations, sounds, and video to place on their course web pages; they have the final responsibility for the content and presentation of the materials. To violate (or not) existing copyright and fair use law may be due to cognitive decision-making if individuals are risk acceptant.

Summary
To frame a deeper understanding of issues involved in a study of copyright and fair use knowledge of faculty members, this literature review first examined the U.S. laws, guidelines and university policies that have evolved into their current form. The first two sections considered the changes brought about through CONFU, DMCA and the TEACH Act, and noted differences of several universities’ policies on fair use in terms of the legal processes that educators should consider while developing their online course materials.

Next, this chapter examined ethical and moral theories that apply to the “rightness” or “wrongness” of infringing. These theories were further supported by a series of deterrence theories that point to conditions in which educators may be prevented from infringing if they break established codes of ethics.
CHAPTER 3 – RESEARCH METHODS

The purpose of this dissertation was two-fold. First, the research sought to determine what educators at a large, doctoral research-extensive (Carnegie) university in the southeastern United States know about copyright and fair use in terms of applying these laws to developing their online course materials. Second, what decision-making process these educators used to determine if they should infringe. Findings show that while the university has made training available to its educators on the use of various tools to create online course materials, educators were not sufficiently aware of university policies on these laws.

This chapter covers the following topics: a) research questions, b) viability of using online survey instruments, c) research subjects, d) research design, e) instrumentation, f) general procedures, g) data collection, and h) treatment of data.

Research Questions

Questions being researched were:

1. Do misperceptions for developing online course content as it relates to federal and state copyright and fair use laws, vary across post-secondary educators with regard to department, academic rank, age, gender, tenure or length of service?

2. Are post-secondary educators deterred from infringing existing copyright and fair use policies in developing their online course materials? If so, what is their decision-making process for deterrence?
To determine whether ethics and deterrence have a role in the decision-making of faculty who use online course materials with text, images, video or sound gleaned from others’ web pages, an online survey was conducted. This part of the Methods chapter focuses on research into the value of online versus paper-and-pencil survey methods.

The reality seems to be rapidly approaching the prediction (Baker, 1998) that online self-administered surveys are the next major step in the evolution of computer-assisted survey information collection (CASIC), the process that started with computer-assisted telephone interviewing (CATI) three decades ago (Couper & Nicholls II, 1998), and was followed by computer-assisted personal interviewing (CAPI). Marketing practitioners also share this view, claiming that the Web is becoming a replacement technology for the telephone survey mode (Black, 1998; Cleland, 1996; Hollis, 1999; Jones Thompson, 1999), just as the telephone survey mode replaced personal interviews in the 1970s (Manfreda, Batagelj and Vehovar, 2002).

Current researchers have at their disposal an increasing array of high-tech, web-based tools for conducting research. Online survey and focus group tools are methods of structuring electronic dialogs to discuss issues and understand diverse viewpoints. Although many qualitative studies – taste tests, for example – will never move to the Internet, the portion of total qualitative work done online could potentially grow “to as high as 25 to 30 percent (of all money spent on qualitative research, both online and offline) in the future, with improved technology and more people wanting to pursue it as a career,” says Bill MacElroy, president of New York-based Internet Marketing Research Organization (IMRO) (Jarvis and Szynal, 2001).

Advantages of using Internet-based survey and focus group tools include:
1. Turn around time for conducting research.

2. Lower costs than those associated with printing, distributing and collecting survey questionnaires.

3. Survey respondents or focus group members who would have to travel, at possibly great expense, to participate.

4. Survey respondents or focus group members who would otherwise not take the time to participate.

5. Automated data capture for ease of coding. Data are automatically inserted into manipulate-able databases as it is collected.

6. Data are warehoused in one place for ease of organizing and analyzing.

One of the major disadvantages to conducting online research is lack of direct observation by the moderator. Janice Caston, Greenfield Online Inc.’s director of marketing, warns, “When they conduct face-to-face focus groups, (moderators) can easily read people's body language. But in online focus groups, they have to be sensitive to the cues (given) in how the respondents are replying to the questions. Are they typing slower? Are they hesitating in terms of getting more information? The moderators are only seeing the typed version of the focus group session,” she says (Jarvis and Szynal, 2001).

Though many remain justifiably skeptical of Internet research’s data quality, technological and methodological improvements mean Internet research is a viable and legitimate form of data collection (Dalley, 2001). For example, the November 2000 U.S. elections provided Harris Interactive market researchers with a unique opportunity to test the accuracy of online sample survey methods. Findings indicated that the accuracy of the
online polling efforts “exceeded our most optimistic expectations” (Taylor, Bremer and Overmeyer, 2001). However, it would be a mistake to assume that all online surveys can forecast results reliably. There are enormous variations in the ways researchers use the Internet to conduct studies. These differences may be greater than the differences used to conduct more standard methods, such as telephone surveys. For instance, all users of online (and other) surveys must remember that no amount of weighting can correct for biases in variables that are close to zero or 100 percent in either the sample or the population not sampled, i.e., those with or without telephones, those who use or do not use computers, etc. (Taylor, Bremer and Overmeyer, 2001).

For web surveys to be scientifically sound as a basis for generalizing results to a larger population, all members of a carefully defined population need to be given a known chance of being selected to participate. In addition, other sources of survey error including non-response error, the extent to which respondents differ from non-respondents, must be evaluated (Groves, 1989). In general, web surveys may produce larger measurement errors than other survey modes, owing to several factors. Web questionnaires are often designed by people with no training in survey methodological (Couper, 2000, p. 465), which results in bad questionnaire design. In addition, Internet users tend to read more quickly, they are more impatient and more discriminating than off-line readers (Internet Rogator, 1998). They may scan written material on the site with their fingers on the mouse ready to click on through to the next thing (Bauman et al., 2000). These issues which would be considered of minor importance in other survey modes may be very significant in web surveys.
A study by Lang, Raver, White, Hogarty and Kromrey (2000) on response differences between web-based and paper-based modes, examined the key issue, “Are participants who completed and submitted online surveys representative of the same population as those who completed the pencil-and-paper survey?” Using parallel web-based and paper-based surveys, these researchers drew their sample from 116 public schools in a large Florida school district. The samples consisted of 770 respondents, 68 percent of which were from the paper group and 32 percent from the web group. The researchers expected to see no statistically significant differences in the responses of the two groups for gender, race and return rates by mode, as well as a variety of subvariables. Neither gender nor race showed statistically significant differences; however, the return rates by mode indicated higher rates associated with the paper mode. Their data supported the notion that the web sample and the paper sample are representative of the same general population after interpretation of the effect sizes for composite variables that were tested.

Overall design of the survey itself may also be an issue. Manfreda, Batagelj and Vehovar (2002) gathered data from three national web surveys conducted as a part of the project RIS (Research on Internet in Slovenia) at the Faculty of Social Sciences, University of Ljubljana, which indicated that web-based survey design is important to achieve high-quality data. The RIS 1996 survey attracted 2,034 respondents, the RIS 1998 survey 6,522 respondents, and the RIS 2001, 14,333 respondents. Owing to undefined sample frame and non-probability sampling, unit response rates were not calculated for the published study. Nevertheless, with additional post-web telephone surveys among Internet users in Slovenia, the researchers estimated that for all three
surveys, almost 10 percent of active Internet users participated in this survey. Based on the data collected, Manfreda, Batagelj and Vehovar (2002) found there are three main issues related to the visual design of web questionnaires:

- graphic layout (Bowker, 1999; Dillman & Bowker, 2001),
- presentation of questions (question form) (Couper, 2001; Elder & Incalcatera, 2000; Gräf, 2002), and
- the number of questions per page (Couper et al., 2000; Dillman & Bowker, 2001; Reips, 2002)

At the conclusion of the RIS project, the researchers reported:

1. Partial non-response was influenced by the use of logotypes and the survey topic, but not by the number of questions per page.
2. Item non-response was influenced by the use of logotypes and multiple-page design.
3. Use of logotypes also influenced the measurement error. Respondents less often chose the middle point on a scale from 1 to 7 (‘‘visit occasionally’’) when logotypes were used compared to questions when no logotypes were used.
4. Respondent satisfaction is an important factor that may influence response rates in future surveys. The survey topic and the optional nature of additional modules had particularly strong impact (Manfreda, Batagelj and Vehovar, 2002).

Research Subjects
An IRB-approved online survey (at http://www.coedu.usf.edu/psweeney/index.asp) and an online focus group using an assigned site in Blackboard® was used to collect data from post-secondary faculty members who deliver for-credit instruction to students via
the Internet in all departments of a large, doctoral research-extensive (Carnegie) university in the southeastern United States.

The Occupational Outlook Handbook (2002) defines post-secondary teachers as individuals who:

1. Teach graduate and undergraduate courses, advise students and perform research at post-secondary institutions.

2. Usually need a Ph.D. for full-time, tenure-track positions in 4-year colleges and universities.

3. May serve on academic or administrative committees that deal with the policies of their institution, departmental matters, academic issues, curricula, budgets, equipment purchases, and hiring.

4. Prepare and deliver lectures, conduct laboratory sessions or discussion groups, and prepare, administer and grade examinations, laboratory assignments and reports.

5. Direct the research programs of graduate students, advise on research matters, conduct research in their field of specialization and publish findings in scholarly journals or books.

Donald P. Ely (ERIC Digest, v22, no date), Professor Emeritus and Founding Director, ERIC Clearinghouse on Information & Technology defines the role of an online instructor as one who is separated from students by distance; students and teachers are connected by computers using an Internet connection for communication. Ideally, an online instructor is one who:
• Uses communication media to “deliver” instruction and to permit interaction between the learner and the instructor, as well as among learners themselves.

• Is committed to becoming competent in the use of the medium.

• May create asynchronous, synchronous or a hybrid course and materials that are available to students 24 hours a day, seven days a week.

• Creates a study guide and serves as a pace-setter for the learners.

• Provides a list of readings from textbooks and World Wide Web sites (ERIC Digest, no date).

Post-secondary educators use technology in all areas of their work. Increasingly, faculty members use sophisticated telecommunications, videoconferencing equipment and the Internet to teach courses to students at remote sites. The use of email, chat rooms, and other techniques has greatly improved communications between students and teachers and among students (Occupational Outlook Handbook, 2002). In the classroom, educators may use computers-including the Internet; electronic mail; software programs, such as statistical packages; and CD-ROMs-as teaching aids. For interaction with students at a distance, many educators post course content, class notes, class schedules, and other information on the Internet (Occupational Outlook Handbook, 2002).

At the university under study, a spring 2003 online catalog indicated that nearly 5,500 for-credit courses were offered in that semester, of which 103 were planned as 100 percent web-based. Of the web-based courses that were shown, some educators’ names were listed as teaching more than one course or section. In addition, all non-web-based courses were offered an online Blackboard® presence, if the educator wished to use it.
There was no exact count of educators at this institution who develop and present course materials using individual web pages or other online technologies.

Only faculty members who have designed/developed any type of for-credit web content for students including individual web pages, WebCT© or Blackboard®, were invited to participate in the online survey and online focus group. Survey and focus group respondents varied in gender, age, academic rank, tenure and length of service. At the university under study, the 2002 Fact Book reported these instructional faculty demographics:

- 1,446 males, 1,079 females
- mean age is 35 years; median is 32 years
- 603 professors, 480 associate professors, 531 assistant professors, 254 instructors, 42 lecturers and 615 other (on four campuses)

Sample Size.

All research subjects were voluntary participants drawn from every department at the university under study. As no exact measure of the number of educators using individual web pages that contain course materials was available, the researcher used “infinity” to determine the sample size. Using an unknown size as the population, the sample size can be determined in a 2-tailed t-test at a=0.05, an effect size of 0.50, and a power of 0.80. Using Jacob Cohen’s Statistical Power Analysis table 2.3.5 (Cohen, 1988, p. 36-37), the sample size indicated was $n=64$. Cohen’s Table 2 (A Power Primer, p. 158) indicated a sample size of $n=64$ to detect a medium difference at a=0.05 for an ANOVA, and a sample size of $n=128$ to detect a medium difference at a=0.05 for a Pearson Product Correlation test.
Research Design

A cross-sectional descriptive study is appropriate for this type of research because the researcher described “what is” the current level of knowledge about copyright and fair use among faculty members. The study was cross-sectional because the variables of interest for the sample of subjects were assayed once, then relationships between variables were determined. To conduct the study, the researcher employed a web-based survey of subjects and conducted an online focus group meeting without otherwise intervening. Due to the nature of descriptive studies, this dissertation sought possible causes for infringement or lack of copyright/fair use knowledge.

As noted in the Literature Review of Online Research, a self-administered web-based or a paper-and-pencil survey was appropriate for gathering data for this dissertation. As no significant difference was noted in the psychometric qualities of pencil-and-paper or web-based online methods for data collection (Lang, Raver, White, Hogarty and Kromrey, 2000), the researcher elected to use an online, web-based survey and an online focus group.

A substantial concern about web-based surveys is the nonrandom nature of the respondent group. Witte, Amoroso and Howard participated in National Geographic’s Survey2000, a study of Internet-based social science research methodology, in which more than 80,000 respondents from 178 different countries and territories completed their web-based survey. In a superficial comparison between Survey2000 and the Literary Digest poll that predicted Landon’s victory over Roosevelt, these authors point out that randomness does not guarantee representativeness; “rather, it provides the means to quantify the level of confidence with which one can say that the sample represents the population” (Witte, Amoroso and Howard, 2000, p188). The probabilities of sample
selection, the size and boundaries of Survey2000’s population membership were unknown, so to serve as external benchmarks, Survey2000 was based on other studies that collected demographics from the more traditional pencil-and-paper and telephone survey methods. Like Survey2000, a comparison of the demographics collected for this dissertation will be made to the general faculty membership population at the university.

Donald (1960), Kish (1965), Vigderhous (1978) among others argue that a paramount concern regarding survey response rate is to maximize rates so that non-response bias will be reduced. To improve response rate, Dillman et al (1974) suggests employing a systematic and repetitive correspondence with members of the survey population. To this end, the researcher provided a paper announcement delivered two weeks before the survey to 1,000 faculty mailboxes throughout the university under study, inviting survey participation. One week prior to the online survey, the researcher provided electronic mail (email) announcements to each department head for dissemination to faculty members within the department. The email message contained a hyperlink to the web address of the survey’s starting page. Provision of the hyperlink to the starting page increased participation by making access to the survey easier. In addition, the researcher offered the department with the most survey responses one $30 gift card to Einstein Bros. Bagels.

In this self-administered survey, demographic, independent variables (IV) that were measured were: gender, age, number of years teaching at this institution, department, tenure and rank. These variables were chosen for their simplicity and to help determine that a cross-section of the university faculty were included in the study. IV’s are selected by an experimenter to determine what effect each independent variable has on the
dependent variable (Hatcher & Stepanski, 1994). Additional variables were more complex and specific to this dissertation, i.e., the number of web-based courses currently taught, formal training in web designed course content, formal training in copyright/fair use policies, and self-rating of knowledge of this university’s copyright/fair use policies. The survey also gathered data on the dependent variable, the knowledge/decisions about copyright/fair use policies used by educators in handling materials (text, images and sound) they make available to students online.

The survey at http://www.coedu.usf.edu/psweeney/index.asp was available for a 3-week period, after which no further data were collected. If the number of survey responses fell below the recommended sample size, an effort to determine additional differences between respondents and non-respondents was made from a small random sample of non-respondents that represented these university colleges:

- Architecture
- Arts & Sciences
- Business
- Computer Science
- Education
- Engineering
- Fine/Performing Arts
- Law
- Library
- Marine Science
- Medicine/Nursing/Public Health

Upon completion of the survey, the $30 gift card was awarded to the department with the most respondents participating.

Nonresponse To A Survey.

Keith Diem’s fact sheet on Maximizing Response Rate and Controlling Nonresponse Error in Survey Research (2002) recommends the following procedures for handling a nonresponse rate for surveys:
1. Ignore nonrespondents. This is a poor strategy because it means the study’s findings can only be “generalized” to the subjects responding.

2. Follow-up with nonrespondents. Instead of assuming that the response by the deadline is the “final” response, plan for a series of reminders that will improve the total. These can include postcards, electronic mail, telephone reminders, or even sending a second or third copy of the questionnaire. Two to three reminders (and even more) have proven effective.

3. Compare respondents to population. If you find that the characteristics of the respondents are statistically similar to the population from which they were drawn, results can be generalized to the population.

4. Compare respondents to nonrespondents. If no statistical differences are found between the respondents and nonrespondents (if their characteristics are known), the results can be generalized to the sample and to the population.

5. “Double-dip” nonrespondents. By resampling (“double-dipping”) 10 to 20 percent of the nonrespondents and securing responses from this sub-sample, a statistical comparison can be made with subjects responding by the original deadline. If they are similar, the data can be pooled and generalized to the sample/population.

6. Compare early to late respondents (“wave effect”). Evidence has shown that late respondents are often similar to nonrespondents. If a statistical comparison of late respondents shows no difference from early respondents,
then data from respondents can be generalized to the population (Diem, 2002).

To control for the problem of nonresponse, the researcher compared early to late respondents after sending a second and third electronic mail reminder, each one week apart.

**Survey Instrument**

Following considerable literature review, the researcher found no applicable survey instrument that addressed the questions used in this study. As a result, the researcher used a new, IRB-approved, online survey instrument designed using Microsoft FrontPage 2002©. FrontPage allows response data to be written directly into a Microsoft Access© database.

The survey was available at [http://www.coedu.usf.edu/psweeney/index.asp](http://www.coedu.usf.edu/psweeney/index.asp). A paper copy of the survey is located in Appendix F. Before administering the online survey, the researcher conducted a pilot-test using five to seven graduate-level students who had participated in at least one prior online class. The pilot test was used to determine reliability of the instrument – are the web pages accessible and displayed properly on a 15-inch computer monitor; does the database accurately collect question responses; are questions easy to read and respond to; and, are all the web pages easy to navigate.

Validity refers to the degree to which a study accurately reflects or assesses the specific concept that the researcher is attempting to measure. A practicing copyright attorney has reviewed the survey and determined its content to be valid. Validity is also concerned with how a measure or procedure appears: does it seem like a reasonable way
to gain the information the researcher is attempting to obtain. A research methods specialist approved the survey.

The survey consisted of one introductory web page that explained the purpose of the survey and solicited consent for participation, a second web page to gather demographic data and a third web page to determine educators’ awareness of copyright and fair use policies. All pages used electronic forms that fed data to a password-protected Microsoft Access 2002 database stored on the same computer server as the survey instrument.

The introductory web page asked for consent to participate in the survey. If a participant selected “I consent to participate,” the web page automatically progressed to the demographics (second) web page. If the participant selected “I do not consent to participate,” a small window prompt thanked the respondent and asked him/her not to continue with the survey. When a respondent completed the questions on the demographic (Section 1) web page, responses were listed by question number and reference to the question on a confirmation page, allowing the participant to return to Section 1 to complete unanswered questions or change responses. If the respondent was satisfied with his/her answers to Section 1, he/she progressed to the “awareness” part of the survey – Section 2, Text, Images and Audio. When a respondent completed the questions in Section 2, a different confirmation page allowed the participant to return to Section 2, thanked him/her for participating in the survey and suggested closing the window or browsing to some other web page.

**Data Collection Procedures**

Survey responses were stored automatically in a Microsoft Access© 2002 database that was part of the web folder automatically created by Microsoft FrontPage© 2002
during design of the online survey. Participant responses were stored in two tables within the same database file. The first database table, “Demographics,” collected data from Section 1 of the online survey. A second table, named “Knowledge” collected data from Section 2 of the online survey. Participant responses were automatically written into the database table, assuring that the researcher does not bias the responses through error by manually typing the data into the database.

The database was viewed only with the researcher’s login and password, from any computer on which Access, FrontPage and Internet access were available. IRB approval hinges on confidentiality, so the database gathered no personally identifiable information such as Remote Computer Name.

**Treatment Of Data**

Quantitative analysis was appropriate for the hypotheses tested in this study. Because the university’s Fact Book (2002) reported more than twice as many female educators to male educators in the population, an unbalanced analysis of variance (ANOVA) was used to test the differences in nominal independent variables collected from the demographic portion (Section 1) of the survey.

To determine the level of copyright/fair use knowledge, the researcher developed a Microsoft Excel© spreadsheet score for each Section 2 survey question with the help of a copyright policy specialist. Responses were scored based on the study university’s policies (scores are shown in Appendix F). For example, in response to Section 2, Question 1: *Book written by one author*, a participant may receive 4 points for the correct answer (10%), 3 (1 chapter), 2 (50%) or 1 (I don’t know) points for progressively incorrect responses, and 0 points for no response or selecting “Unlimited amount.”
Online Focus Group Procedures

In addition to collecting and analyzing data quantitatively, emphasizing measurement and analysis of relationships between variables, the researcher employed the qualitative strategy of collecting and analyzing descriptive data.

Michael Myers (2002) reports that although most researchers do either quantitative or qualitative research work, some researchers have suggested combining one or more research methods in the one study (called triangulation). Good discussions of triangulation can be found in Gable (1994), Kaplan and Duchon (1988), Lee (1991), Mingers (2001) and Ragin (1987).

Qualitative research involves the use of qualitative data, such as interviews, documents and participant observation data, to understand and explain social phenomena. As there has been little or no research on university educators’ knowledge of copyright and fair use, a qualitative study will aid the researcher in interpreting the behavior of online educators who are/are not deterred from violating copyright and fair use practices.

Wolcott (1994) describes the qualitative method of study through the term, “transformation,” for applying a variety of strategies, including description, analysis and interpretation. Wolcott assumes that in description, data “should speak for themselves,” and that an analysis of those data should reveal the data as originally recorded. He identifies a process for analysis by which the research expands and extends data through key factors that are grounded, methodical and carefully documented. Lastly, Wolcott argues that transforming qualitative data is interpretive, where the researcher provides his/her own explanation of the events and behaviors.
Qualitative research can be positivist, interpretive or critical. The image below, based on Myers’ (2002) diagram, indicates how all three underlying philosophical assumptions influence and guide the body of qualitative research.

This study adopted the position of interpretive guidance. Myers (2002) explains

*The philosophical base of interpretive research is hermeneutics and phenomenology (Boland, 1985). Interpretive studies generally attempt to understand phenomena through the meanings that people assign to them and interpretive methods of research are ‘aimed at producing an understanding of the context of the information system, and the process whereby the information system influences and is influenced by the context’ (Walsham 1993, p. 4-5). Interpretive research does not predefine dependent and independent variables, but focuses on the full complexity of human sense making as the situation emerges (Kaplan and Maxwell, 1994).*

Within the interpretive context, the strategy for this part of the research was guided by grounded theory in which data are systematically gathered and analyzed. Developed by Glaser and Strauss in 1967, grounded theory is an inductive, discovery methodology that allows the researcher to develop a theoretical account of the general features of a topic while simultaneously grounding the account in empirical observations or data. To be more specific, Glaser and Strauss describe this theory as:

*...inductively derived from the study of the phenomenon it represents. That is, discovered, developed, and provisionally verified through systematic data collection and*
analysis of data pertaining to that phenomenon. Therefore, data collection, analysis, and theory should stand in reciprocal relationship with each other. One does not begin with a theory, then prove it. Rather, one begins with an area of study and what is relevant to that area is allowed to emerge. (Strauss and Corbin, 1990, p. 23.)

Role of the Researcher in Qualitative Design

The researcher’s role in this area of the study was as moderator of an online focus group. Following are general assumptions about this role (Merriam, 1988, and Creswell, 1994).

1. Qualitative researchers are concerned primarily with **process**, rather than outcomes or products.

2. Qualitative researchers are interested in **meaning** – how people make sense of their lives, experiences and their structures of the world.

3. The qualitative researcher is the **primary instrument** for data collection and analysis. Data are mediated through this human instrument, rather than through inventories, questionnaires or machines.

4. Qualitative research involves **fieldwork**. The researcher physically goes to the people, setting, site or institution to observe or record behavior in its natural setting.

5. Qualitative research is **descriptive** in that the researcher is interested in process, meaning and understanding gained through words or pictures.

6. The process of qualitative research is **inductive** in that the researcher builds abstractions, concepts, hypotheses and theories from details (Merriam, 1988, and Creswell, 1994).
As part of understanding the role of moderator of an online focus group in this study, the researcher’s personal education and experience must be revealed, along with any advantages or problems these might create. The researcher holds a master’s degree in Library and Information Science and has taken a graduate-level course in Internet Law, both of which have contributed to a basic understanding of U.S. copyright law as it applies to educators and librarians. The researcher has used the online virtual chat room features built into WebCT and Blackboard® from 1997 to the present with much success, engaging post-secondary faculty members as well as students. Since the researcher is not a lawyer with special expertise in U.S. copyright law, some of the interpretation of violation was verified by a copyright specialist.

Researcher bias may have existed in that Library and Information Science faculty were included as possible focus group members, and the researcher assumed that these educators may be more likely to teach copyright and fair use policies to their library school students than educators from other departments. A second bias may have been towards those participants who are slower at typing their responses. To minimize the first bias, the researcher endeavored to include members from many departments in the focus group, thus reducing the overall effect of comments from any one segment of the university. To lessen the effect of the second bias, the researcher made no interpretations of the data until the focus group was concluded and all contributions were printed.

**Qualitative Data Collection Method**

To meet the requirements of grounded theory in the interpretive context, the researcher looked at what triggers the deterrence of faculty members from violating copyright and fair use guidelines through the use of small focus groups.
Coding Schema

R. P. Weber (1990) informs us, “To make valid inferences from the text [of a focus group], it is important that the classification procedure be reliable in the sense of being consistent: Different people should code the same text in the same way” (p. 12). When dealing with \textit{a priori} coding, the coding schema attributes and definitions are established prior to the analysis based on a theory from reviewing the subject literature. Professional colleagues then agree on coding schema and definitions, and the coding is applied to the collected data from the focus groups. Revisions are made as necessary, and the schema and definitions are further defined up to the point that maximizes mutual exclusivity and exhaustiveness (Weber, 1990, Stemler, 2001).

As Weber further comments, “reliability problems usually grow out of the ambiguity of word meanings, category definitions, or other coding rules” (p. 15). To improve validity, this researcher relied on two different raters to measure the quality of the coding schema and definitions for this research, one of whom is a copyright law expert, the second experienced with deterrence theory.

Cohen’s Kappa is probably the most widely accepted calculation for such reliability measurement, which approaches 1 if coding is perfectly reliable, and goes to 0 when there is no agreement other than what would be expected by chance (Haney et al., 1998, Stemler, 2001). The Kappa measurement of inter-observer agreement compensates and corrects for the proportion of agreement that might occur by chance. Reliability will be checked by testing the correlation between the average scores assigned by two raters, and by determining the Cohen's Kappa for the scores given for each criterion in Table 2 (see Appendix).
Cohen’s Kappa is computed as 

\[ \kappa = \frac{P_a - P_e}{1 - P_e} \]

where \( P_a \) = proportion of units on which the raters agree and \( P_e \) = the proportion of units for which agreement is expected by chance (Stemler, 2001).

**Number of Focus Groups**

The next unit of analysis in focus group research was to determine the number of groups. According to David L Morgan (1988), one group is “never enough; you may be observing little more than the dynamics of that unique set of participants.” He recommends using three or four groups when research is exploratory or aimed at getting someone’s perspective, which is the case in this research study. Morgan further states that the more homogeneous groups are in terms of both background and role-based perspectives, the fewer groups are needed, with as few as two groups required to be on “safer ground” (Morgan, 1988, Krueger, 1988, Calder, 1977). Based on Morgan’s recommendations, the author used three focus groups for this research study.

**Number of Participants Per Focus Group**

Determining the number of participants for each focus group was the next consideration. Dynamics of discussions in smaller groups are likely to be different from those in larger groups, with greater contributions needed from each small group participant, according to Morgan (1988). Morgan reports that the favored size is for small, homogenous groups is somewhere between six and 10 members per focus group due to the practical problems of time constraints and possible substantive productivity issues including disruptions and “friendship pairs.” Morgan recommends over-recruiting by 20 percent to achieve the desired number of participants (Morgan, 1988). Thus, this
researcher proposes to recruit eight participants per group, with a minimum of six participants to ensure enough group members for a substantive discussion. The total possible maximum number of participants was 24, with a total possible minimum number of 18 participants.

In the event that fewer than six participants attended the focus group or if fewer than 18 participants were recruited, the author proposed to conduct individual interviews, foregoing the ability to observe spontaneous interactions only a focus group can provide. In this case, greater emphasis must be placed on a prepared interview and time involved (Morgan, 1988). For this research study, the number of faculty members personally interviewed were relative to the number of non-participants in the focus groups, i.e., if fewer than six participants attend a focus group meeting, the author would conduct personal interviews with the same amount of faculty members as the number of no-shows below six. The same open-ended questions that formed the focus group discussion were used as the basis for interviewing the missing individual group members. Following a personal interview, this researcher coded responses based on the same schema attributes as responses from focus group discussions (Appendix E).

If necessary, a second alternative to conducting focus group discussions through individual observation of individual faculty members in the act of creating one web page used for online course materials could be used. As with the personal interviews, the author would conduct observations with the same number of no-shows that falls below the minimum of six. In this scenario, only simple observations would be made, and no questions from the focus group discussions used. Following each individual’s observation, the author would write a detailed description of the observed behavior.
These results would then be coded based on the same schema attributes (where possible) as the focus group. This alternative was not needed for this research.

**Source of Focus Group Participants**

Given the small number and size of the online focus groups established for this research study, a solution to determine the source of participants, according to Morgan (1988), was to work with theoretically chosen subgroups from the total population. Myril Axelrod (1975) advises that researchers “should concentrate on those population segments that are going to provide the most meaningful information.” Using a concentrated segment may cause a bias if researchers wish to generalize the results to a larger population. Morgan contends that this bias is a problem only if it is ignored or interpreted as representing a full spectrum of experiences and opinions when reported in the findings (Morgan, 1988).

To recruit participants most likely to provide meaningful information, this researcher invited the dean of each of each college at the university under study to provide the names of three focus group candidates who were recognized as experts in developing online course materials. Since there were 12 colleges at the university under study, this provided a pool of 36 possible focus group participants. All 36 possible focus group candidates were offered a cash incentive of $10 to participate in this research study, to be paid after the focus group’s meeting. Each candidate was provided a schedule of possible dates and times to select which focus group in which they choose to participate. Each was told the approximate length of the focus group session. Each was given the opportunity to decline participation without redress, but with the understanding that they may be asked
to participate in an individual interview or individual observation as described above, should fewer than six participants select any one of the three focus group meetings.

**Focus Group Length of Time**
Robert K. Merton et al (1956) emphasizes that to cover in depth the concrete issues and participant involvement for focus groups, as well as to accommodate individuals’ time constraints, the length of a session is typically set between one to two hours in length. Morgan (1988) recommends telling participants that the session will run a half hour longer amount of time to cushion the disruption of early leavers. For the purpose of this research study, this researcher provided a time frame of one to one and one-half hours to allow for early leavers as well as for concrete involvement.

**Resource for Focus Group**
The resource available to this researcher for conducting online focus groups was Blackboard Learning and Community Portal Systems™ (Release 6). The purpose of using Blackboard was to take advantage of its Virtual Chatroom archiving tool. This tool allows a researcher to print an entire online meeting for later analysis. Text from the online meeting can also be saved as a text file, which can then be directly imported into qualitative analysis software products such as QSR’s NVivo Nud*ist or similar for refining the analysis.

**Focus Group Discussion Guidelines**
Morgan suggests that focus group session begin with introducing the topic in an honest but fairly general fashion accompanied by general ground rules: anyone can type a response at any time, no side chat with other focus group members, encouraging everyone to participate with no one dominating the chat (Morgan, 1988). The general purpose is to learn from participants their understanding of university policies on
copyright and fair use, and their decision-making process about using copyrighted data that originates from someone other than themselves they use for online course materials.

Following are the guidelines and logistics used for the online focus group in a round-table approach:

1. The focus group will be greeted and the purpose of the meeting will be stated by the researcher, who will also facilitate the questions.

2. Ground rules will be stated. Each participant will be allowed to respond or not to every question posed, with a maximum chance to participate in the online discussion.

3. Each participant will be asked to and provide a brief biographical description to introduce him/herself, including the variables of department, academic rank, age, gender, tenure and length of service. They will also be asked to describe online course materials he/she is currently using. (Responses pertain to Research Question 2: Do misrepresentations for developing online course content as it relates to federal and state copyright and fair use laws vary across post-secondary educators with regard to?)

4. Focus group participants will be asked these research questions:
   a. What if any is the nature of any formal training in fair use you have received? Where did or where would you go to obtain this formal training? (Responses pertain to Research Question 1: What is the level of educators’ knowledge of copyright and fair use?)
b. What does infringement of copyright and fair use mean to you?

(Responses pertain to Research Question 1: What is the level of educators’ knowledge of copyright and fair use?)

c. If a faculty member did infringe copyright laws, what would be the consequence to him/her personally? His/her department? His/her university? (Responses pertain to Research Question 1: What is the level of educators’ knowledge of copyright and fair use?)

d. Over the past year, was there a time when you were undecided about using copyrighted materials as part of your web course content? Please describe the situation and how you reasoned through it.

(Responses pertain to Research Question 3: Are post-secondary educators deterred from infringing existing copyright and fair use policies in developing their online course materials? If so, what is their decision-making process for deterrence?)

5. After the meeting, focus group members may print the archived Blackboard discussion and request a copy of the final research paper their comments generated. The cash incentive will be hand-delivered to each participant’s on-campus mailbox.

Once data from the focus groups were gathered, they were coded for simplification (reduced) to provide a means of content analysis (Appendix E). The coding system was used for a) seeking relevant phenomena, b) collecting examples of these phenomena, and c) analyzing those phenomena to find commonalities, differences, patterns and structures (Seidel and Kelle, 1995, 55-56). The codes were also used as heuristic devices for
discovery (Seidel and Kelle, 1995, 58). Analysis was performed using a software application such as QSR’s NVivo Nud*ist.

Processes designed to control the researcher’s bias were to make sure that the experimenter did not know the subjects’ experience with web content design/development or fair use training prior to administering the focus group.
CHAPTER 4 – RESULTS

The objective of this dissertation was to investigate university faculty members’ knowledge of copyright and fair use laws and how this knowledge was applied to their online course content. The study applied research methodology in two forms: the first was an online survey to gather demographic and specific application knowledge, and the second was online focus group discussions to gather an understanding of the reasons for copyright infringement deterrence through natural dialog.

In light of recent changes to copyright and fair use laws, primarily through the TEACH Act (S. 487), the following questions arose: 1) Do misperceptions for developing online course content as it relates to federal and state copyright and fair use laws vary across post-secondary educators with regard to department, academic rank, gender, tenure or length of service? 2) Are post-secondary educators deterred from infringing existing copyright and fair use policies in developing their online course materials? If so, what is their decision-making process for deterrence?

To answer these questions, an online survey instrument was adapted from a similar 2002-03 pilot-tested online survey conducted by the researcher with faculty at 2-year colleges in Florida. In addition, the researcher developed and pilot-tested a set of focus group questions with graduate teaching assistants at the university under study. This chapter presents the results from the survey first, followed by the results from the focus group discussions.
The adapted online survey instrument consisted of 21 questions recording demographic and situational factors, and measuring knowledge of copyright and fair use in typical online course content scenarios. The instrument also assessed compliance with federal as well as university policies. Responses to these questions were then analyzed using SAS and Microsoft Excel XP.

In response to Question 1, survey objectives were to:

1. Describe post-secondary educators’ demographic characteristics and, based on those characteristics, determine statistical differences in knowledge of copyright and fair use, including self-assessed level of knowledge. Demographic characteristics included gender, tenure, professional rank, department, number of sections taught through online (electronic) means, number of years of general teaching experience, and presence of formal training in either web design or copyright and fair use. Respondents also reported their level of awareness of current United States policies as well as policies in place at the university under study.

2. Score how well post-secondary educators applied their copyright/fair use knowledge for online course content in terms of specific examples.

Apply this knowledge to:

a. Placing copyrighted Text into online materials.

b. Instructing students in placing copyrighted text (InsText) into online materials.

c. Placing copyrighted Image files into online materials.

d. Instructing students in placing copyrighted image files (InsImage) into online materials.

e. Apply knowledge to placing copyrighted Audio into online materials.
f. Apply knowledge to instructing students in placing copyrighted audio (InsAudio) files into online materials.

Comparing Independent Variables for All Subjects

The number of post-secondary educators at the university at the time of the study was 2,525. As expected, faculty participation was difficult to secure. Following three waves of email (electronic) notice providing faculty members with a hyperlink directly to the online survey, 79 educators or 3.1 percent of this population completed all or part of the study’s instrument. For purposes of comparison, participants who provided no response to demographic survey items despite responding to questions on the course materials items were eliminated from the study, resulting in a total N = 64.

To simplify the interpretation of complex data due to high correlation or “redundancy” with one another, variables were reduced as indicated in Table 4.1. This procedure helps to account for an unequal number of N’s (Draper 1981).

Table 4.1 Reduced Dependent Variables

<table>
<thead>
<tr>
<th>Variable</th>
<th>Reduced</th>
<th>Variable</th>
<th>Reduced</th>
<th>Variable</th>
<th>Reduced</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Gender</strong></td>
<td></td>
<td><strong>Department</strong></td>
<td></td>
<td><strong>Web Design Training</strong></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>0</td>
<td>Arts &amp; Sciences = 1</td>
<td>1</td>
<td>Yes</td>
<td>1</td>
</tr>
<tr>
<td>Female</td>
<td>1</td>
<td>Education = 2</td>
<td>2</td>
<td>No</td>
<td>0</td>
</tr>
<tr>
<td><strong>Tenure</strong></td>
<td></td>
<td>Marine Science = 3</td>
<td>3</td>
<td><strong>Copyright/ Fair Use</strong></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>1</td>
<td>Computer Science = 4</td>
<td>4</td>
<td>Yes</td>
<td>1</td>
</tr>
<tr>
<td>No</td>
<td>0</td>
<td>Business = 5</td>
<td>5</td>
<td>No</td>
<td>0</td>
</tr>
<tr>
<td><strong># Online Sections</strong></td>
<td></td>
<td>Medical = 6</td>
<td>6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>0 = 1</td>
<td>1</td>
<td>1 = (1,2)</td>
<td>7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1-3 = 2</td>
<td>2</td>
<td>2 = (3,4)</td>
<td>8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4-6 = 3</td>
<td>3</td>
<td>Rank</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7+ = 4</td>
<td>4</td>
<td>Grad Teaching Asst. = 1</td>
<td>1 = (1,2)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong># Years Taught</strong></td>
<td></td>
<td>Instructor = 2</td>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-1 = 1</td>
<td>1</td>
<td>1 = (1,2)</td>
<td></td>
<td>Assistant Professor = 3</td>
<td></td>
</tr>
<tr>
<td>2-5 = 2</td>
<td>2</td>
<td>2 = (3,4)</td>
<td></td>
<td>Associate Professor = 4</td>
<td></td>
</tr>
<tr>
<td>6-9 = 3</td>
<td>3</td>
<td>Professor = 5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10+ = 4</td>
<td>4</td>
<td>Adjunct = 6</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Data Analyses

Both Objectives 1 and 2 are combined in the following descriptive statistics. The analyses examines the overall knowledge of copyright and fair use applied to variables for general online use of Text, Images, Audio and Policy (institutional policies on copyright and fair use, as well as knowledge for instructional use of Text, Images, Audio, a total Score of Sections A, B and C of the survey for correct responses, and a self-rated Awareness rank based on a scale of 1 to 5 with 1 being least knowledgeable and 5 being expert.

Gender

To discover if males or females were more likely to have copyright/fair use knowledge, a one-way analysis of variance (ANOVA) was performed using the GLM method in SAS, providing a means for each Demographic independent variable (IV) to each dependent Materials variable. Of those reported in the total N = 64, the respondents were 51.5 percent male (n=33) and 48.5 percent female (n=31). Twelve additional respondents did not specify their gender despite answering other questions. The distribution of males and females is similar to that of the general population of educators at the university under study (57 percent male and 43 percent female). A comparison of means for gender differences for each dependent variable is shown in Table 4.2. The table also indicates the highest and actual score for individual variables as well as the highest and lowest scores for each gender.
### Table 4.2 Comparison of copyright / fair use knowledge by gender

<table>
<thead>
<tr>
<th>Variable</th>
<th>Male</th>
<th>Female</th>
<th>Pr&gt;F</th>
<th>ES</th>
<th>Best Possible Score</th>
<th>Best Actual Score</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Highest Score: 35</strong></td>
<td><strong>Lowest Score: 4</strong></td>
<td><strong>Highest Score: 30</strong></td>
<td><strong>Lowest Score: 4</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Text*</td>
<td>32</td>
<td>4.47</td>
<td>3.06</td>
<td>30</td>
<td>2.90</td>
<td>2.59</td>
</tr>
<tr>
<td>Instructing use of Text*</td>
<td>33</td>
<td>2.55</td>
<td>1.28</td>
<td>30</td>
<td>1.90</td>
<td>1.24</td>
</tr>
<tr>
<td>Image</td>
<td>35</td>
<td>2.82</td>
<td>2.76</td>
<td>30</td>
<td>2.03</td>
<td>1.94</td>
</tr>
<tr>
<td>Instructing use of Image</td>
<td>33</td>
<td>1.33</td>
<td>1.36</td>
<td>30</td>
<td>1.03</td>
<td>1.13</td>
</tr>
<tr>
<td>Audio</td>
<td>33</td>
<td>2.76</td>
<td>2.41</td>
<td>30</td>
<td>2.20</td>
<td>1.92</td>
</tr>
<tr>
<td>Instructing use of Audio</td>
<td>33</td>
<td>0.48</td>
<td>1.00</td>
<td>30</td>
<td>0.20</td>
<td>0.61</td>
</tr>
<tr>
<td>Policy</td>
<td>33</td>
<td>1.67</td>
<td>1.29</td>
<td>30</td>
<td>1.27</td>
<td>1.11</td>
</tr>
<tr>
<td>Aware</td>
<td>33</td>
<td>2.50</td>
<td>1.06</td>
<td>29</td>
<td>2.48</td>
<td>1.02</td>
</tr>
<tr>
<td><strong>Score</strong></td>
<td>32</td>
<td>15.80</td>
<td>9.25</td>
<td>30</td>
<td>11.53</td>
<td>7.15</td>
</tr>
</tbody>
</table>

* Significant at the $\alpha = 0.05$ level

Results indicate no significant difference for Gender and use of Image (F(1,61) = 1.68, p< 0.20), Instructing students in use of Images (F(1,61) = 0.90, p< 0.35), Audio (F(1,61) = 1.02, p< 0.32), Instructing students in use of Audio (F(1,61) = 1.81, p< 0.18), Policy (F(1, 61) = 1.72, p< 0.19), and Aware[ness] of copyright/fair use guidelines (F(1,60) = 1.01, p< 0.90).

Significant differences for Gender were found in use of Text (F(1,60) = 4.72, p< 0.03), Instructing students in the use of Text (F(1,61) = 4.12, p< 0.05), and Total Score (F(1,60) = 4.11, p< 0.05). Male participants’ Total Scores of males were a mean of 15.8 points compared to the female mean score of 11.53 points. Together, the Gender mean Total Score was 13.57 points.
Effect size (ES) measures the magnitude of differences \( (d) \) between two means. Cohen (1988) defined Effect Size as “small, \( d=.2 \),” “medium, \( d=.5 \)” and “large, \( d=.8 \).

Effect size for this research was measured as the standardized difference between two means \( d = (M_1 - M_2) / \sigma_{\text{pooled}} \). As noted in Table 4.2, Text \( (d = 0.7832) \), Instructional Use of Text \( (d = 0.7295) \) and Total Score \( (d = 0.7305) \) approach the “large” range. Image, Instructing students in use of Audio \( (d = 0.48) \) and Policy \( (d = 0.47) \) are within the “medium” range. All other variables have a “small” effect size.

Variables with significant differences are shown in Tables 4.3, 4.4 and 4.5 respectively.

Table 4.3 ANOVA of use of text from others’ web pages by gender

<table>
<thead>
<tr>
<th>Source</th>
<th>DF</th>
<th>SS</th>
<th>MS</th>
<th>F Value</th>
<th>Pr&gt;F</th>
</tr>
</thead>
<tbody>
<tr>
<td>Model</td>
<td>1</td>
<td>38.105</td>
<td>38.105</td>
<td>4.72</td>
<td>0.0338*</td>
</tr>
<tr>
<td>Error</td>
<td>60</td>
<td>484.668</td>
<td>8.077</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C Total</td>
<td>61</td>
<td>522.744</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Significant at the \( \alpha = .05 \) level

Table 4.4 ANOVA of instructing students to use text on student web pages by gender

<table>
<thead>
<tr>
<th>Source</th>
<th>DF</th>
<th>SS</th>
<th>MS</th>
<th>F Value</th>
<th>Pr&gt;F</th>
</tr>
</thead>
<tbody>
<tr>
<td>Model</td>
<td>1</td>
<td>6.547</td>
<td>6.547</td>
<td>4.12</td>
<td>0.0467*</td>
</tr>
<tr>
<td>Error</td>
<td>61</td>
<td>96.862</td>
<td>1.588</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C Total</td>
<td>62</td>
<td>103.429</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Significant at the \( \alpha = .05 \) level

Table 4.5 ANOVA of copyright / fair use score by gender

<table>
<thead>
<tr>
<th>Source</th>
<th>DF</th>
<th>SS</th>
<th>MS</th>
<th>F Value</th>
<th>Pr&gt;F</th>
</tr>
</thead>
<tbody>
<tr>
<td>Model</td>
<td>1</td>
<td>283.529</td>
<td>283.529</td>
<td>4.11</td>
<td>0.0471*</td>
</tr>
<tr>
<td>Error</td>
<td>60</td>
<td>4140.342</td>
<td>69.006</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C Total</td>
<td>61</td>
<td>4423.871</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Significant at the \( \alpha = .05 \) level
Tenure

The majority of respondents (55 percent) indicated that they did not hold tenure based on a Yes-No response. No significant differences were indicated for those who do (n=26) or who do not (n=36) hold Tenure. A comparison of means for tenure differences for each dependent variable is shown in Table 4.6. Effect sizes for all variables are “small” except for Instructing student in use of Audio and Awareness, which were “medium.” Table 4.6 indicates the range of scores earned by tenured/non-tenured faculty members, as well as indicating the highest and actual score for individual variables.

Table 4.6 Comparison of copyright / fair use knowledge by tenure

<table>
<thead>
<tr>
<th>Variable</th>
<th>N</th>
<th>Mean</th>
<th>SD</th>
<th>N</th>
<th>Mean</th>
<th>SD</th>
<th>Pr&gt;F</th>
<th>ES</th>
<th>Best Possible Score</th>
<th>Best Actual Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Text</td>
<td>36</td>
<td>3.81</td>
<td>3.05</td>
<td>25</td>
<td>3.60</td>
<td>2.92</td>
<td>0.9887</td>
<td>0.0047</td>
<td>15</td>
<td>14</td>
</tr>
<tr>
<td>Instructing use of Text</td>
<td>36</td>
<td>2.17</td>
<td>1.32</td>
<td>26</td>
<td>2.31</td>
<td>1.29</td>
<td>0.6766</td>
<td>-0.1517</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Image</td>
<td>36</td>
<td>2.17</td>
<td>2.41</td>
<td>26</td>
<td>2.50</td>
<td>2.28</td>
<td>0.5848</td>
<td>-0.1989</td>
<td>21</td>
<td>3</td>
</tr>
<tr>
<td>Instructing use of Image</td>
<td>36</td>
<td>1.14</td>
<td>1.17</td>
<td>26</td>
<td>1.31</td>
<td>1.41</td>
<td>0.6094</td>
<td>-0.1856</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Audio</td>
<td>36</td>
<td>2.67</td>
<td>2.08</td>
<td>26</td>
<td>2.35</td>
<td>2.35</td>
<td>0.5731</td>
<td>0.2039</td>
<td>17</td>
<td>5</td>
</tr>
<tr>
<td>Instructing use of Audio</td>
<td>36</td>
<td>0.22</td>
<td>0.64</td>
<td>26</td>
<td>0.54</td>
<td>1.07</td>
<td>0.1504</td>
<td>-0.5133</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Policy</td>
<td>36</td>
<td>1.56</td>
<td>1.08</td>
<td>26</td>
<td>1.42</td>
<td>1.39</td>
<td>0.6745</td>
<td>0.1591</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>Aware</td>
<td>36</td>
<td>2.37</td>
<td>0.91</td>
<td>26</td>
<td>2.69</td>
<td>1.16</td>
<td>0.2304</td>
<td>-0.4341</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Score</td>
<td>35</td>
<td>13.53</td>
<td>8.69</td>
<td>25</td>
<td>13.64</td>
<td>8.62</td>
<td>0.9606</td>
<td>-0.0180</td>
<td>88</td>
<td>35</td>
</tr>
</tbody>
</table>

* Significant at the \( \alpha = 0.05 \) level

Number of Online Sections Taught

Data for the Sections variable were reduced into two groups: 0 and 1-3 became Group 1, and 4-6 and 7+ became Group 2. It was believed that faculty members who
have taught fewer online sections were more likely to have less experience designing online materials. An unusually small number of participants have taught more than three Online Sections of courses (N=8); the majority of this institution’s faculty report their current teaching load between one and three courses/sections (72.2 percent). Table 4.8 indicates no significant difference for any of the variables. The variable, *Instructing students in use of Audio*, indicates a relatively “large” effect size (-0.70); the effect size for *Text* (0.57) and *Aware[ness]* (-0.44) is “medium,” and all other variables have a “small” effect size. Table 4.7 indicates the range of scores earned by group, as well as indicating the highest and actual score for individual variables.

*Table 4.7 Comparison of copyright / fair use knowledge by number of online sections taught*

<table>
<thead>
<tr>
<th>Variable</th>
<th>Less than 3 (Group 1)</th>
<th>More than 3 (Group 2)</th>
<th>Pr&gt;F</th>
<th>ES</th>
<th>Best Possible Score</th>
<th>Best Actual Score</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>Mean</td>
<td>SD</td>
<td>N</td>
<td>Mean</td>
<td>SD</td>
</tr>
<tr>
<td>Text</td>
<td>56</td>
<td>3.77</td>
<td>3.01</td>
<td>7</td>
<td>2.71</td>
<td>2.21</td>
</tr>
<tr>
<td>Instructing use of Text</td>
<td>56</td>
<td>2.25</td>
<td>1.25</td>
<td>8</td>
<td>2.25</td>
<td>1.58</td>
</tr>
<tr>
<td>Image</td>
<td>56</td>
<td>2.41</td>
<td>2.47</td>
<td>8</td>
<td>2.38</td>
<td>2.13</td>
</tr>
<tr>
<td>Instructing use of Image</td>
<td>56</td>
<td>1.16</td>
<td>1.19</td>
<td>8</td>
<td>1.50</td>
<td>1.69</td>
</tr>
<tr>
<td>Audio</td>
<td>56</td>
<td>2.48</td>
<td>2.19</td>
<td>8</td>
<td>2.50</td>
<td>2.14</td>
</tr>
<tr>
<td>Instructing use of Audio</td>
<td>56</td>
<td>0.29</td>
<td>0.80</td>
<td>8</td>
<td>0.75</td>
<td>1.04</td>
</tr>
<tr>
<td>Policy</td>
<td>56</td>
<td>1.45</td>
<td>1.19</td>
<td>8</td>
<td>1.75</td>
<td>1.39</td>
</tr>
<tr>
<td>Aware</td>
<td>56</td>
<td>2.45</td>
<td>1.05</td>
<td>8</td>
<td>2.75</td>
<td>0.89</td>
</tr>
<tr>
<td>Score</td>
<td>55</td>
<td>13.80</td>
<td>8.52</td>
<td>7</td>
<td>12.57</td>
<td>8.56</td>
</tr>
</tbody>
</table>

* Significant at the $\alpha = 0.05$ level
**Formal Training in Web Design**

Nearly two-thirds (62.5 percent) of the participants reported they had received no formal web design training based on a Yes-No response to the survey question. Table 4.9 below displays the results of the means and standard deviations of the responses, as well as the range of scores earned by those who received formal web page design training, as well as indicating the highest and actual score for individual variables.

### Table 4.9 Comparison of copyright / fair use knowledge by web design training

<table>
<thead>
<tr>
<th>Variable</th>
<th>N</th>
<th>Mean</th>
<th>SD</th>
<th>N</th>
<th>Mean</th>
<th>SD</th>
<th>Pr&gt;F</th>
<th>ES</th>
<th>Best Possible Score</th>
<th>Best Actual Score</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Yes = 1</td>
<td></td>
<td>No = 0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Highest Score: 35</td>
<td></td>
<td>Lowest Score: 4</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Highest Score: 29</td>
<td></td>
<td>Lowest Score: 2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Text</td>
<td>39</td>
<td>4.05</td>
<td>3.06</td>
<td>24</td>
<td>3.00</td>
<td>2.67</td>
<td>0.1702</td>
<td>0.5171</td>
<td>15</td>
<td>14</td>
</tr>
<tr>
<td>Instructing use of Text</td>
<td>40</td>
<td>2.28</td>
<td>1.28</td>
<td>24</td>
<td>2.21</td>
<td>1.32</td>
<td>0.8426</td>
<td>0.0761</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Image</td>
<td>40</td>
<td>2.55</td>
<td>2.54</td>
<td>24</td>
<td>2.17</td>
<td>2.22</td>
<td>0.5430</td>
<td>0.2253</td>
<td>21</td>
<td>3</td>
</tr>
<tr>
<td>Instructing use of Image</td>
<td>40</td>
<td>1.13</td>
<td>1.28</td>
<td>24</td>
<td>1.33</td>
<td>1.20</td>
<td>0.5228</td>
<td>-0.2280</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Audio</td>
<td>40</td>
<td>2.40</td>
<td>2.09</td>
<td>24</td>
<td>2.63</td>
<td>2.36</td>
<td>0.6920</td>
<td>-0.1459</td>
<td>17</td>
<td>5</td>
</tr>
<tr>
<td>Instructing use of Audio</td>
<td>40</td>
<td>0.30</td>
<td>0.72</td>
<td>24</td>
<td>0.41</td>
<td>1.02</td>
<td>0.5946</td>
<td>-0.1762</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Policy</td>
<td>40</td>
<td>1.35</td>
<td>1.19</td>
<td>24</td>
<td>1.71</td>
<td>1.23</td>
<td>0.2539</td>
<td>-0.4207</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td><strong>Aware</strong>*</td>
<td>39</td>
<td>2.18</td>
<td>0.94</td>
<td>24</td>
<td>3.00</td>
<td>0.98</td>
<td><strong>0.0016</strong></td>
<td>-1.2077</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Score</td>
<td>39</td>
<td>13.79</td>
<td>8.72</td>
<td>24</td>
<td>13.46</td>
<td>8.22</td>
<td>0.8797</td>
<td>0.0551</td>
<td>88</td>
<td>35</td>
</tr>
</tbody>
</table>

* Significant at the $\alpha = 0.05$ level

Differences exist between those faculty members in Aware[ness] of copyright/fair use policies and laws (p=0.0016) where faculty members reported they had formal web training as shown in Table 4.10. No significant differences were found in those who had web training when applied to their use of Text (F(1,61) = 1.93, p< 0.17), Instructing students in use of Text (F(1,62) = 0.04, p< 0.84), Image (F(1, 62) = 0.37, p< 0.54),

66
Instructing students in use of Image (F(1,62) = 0.41, p< 0.52), Audio (F(1,62) = 0.16, p< 0.69), Instructing students in use of Audio (F(1,62) = 0.29, p< 0.59), Policy (F(1,62) = 1.33, p< 0.2539) and their Total Score (F(1,61) = 0.02, p< 0.88).

A “large” effect size can be seen in the Aware[ness] (d=-1.2077) variable. A “medium” effect size appears in the Text (d=0.52) and Policy (d=-0.42) variables. All other variables indicate a “small” effect size.

Table 4.10 ANOVA of web design training by web design training

<table>
<thead>
<tr>
<th>Source</th>
<th>DF</th>
<th>SS</th>
<th>MS</th>
<th>F Value</th>
<th>Pr&gt;F</th>
</tr>
</thead>
<tbody>
<tr>
<td>Model</td>
<td>1</td>
<td>10.002</td>
<td>10.002</td>
<td>10.95</td>
<td>0.0016*</td>
</tr>
<tr>
<td>Error</td>
<td>61</td>
<td>55.7436</td>
<td>0.914</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C Total</td>
<td>62</td>
<td>65.7460</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Significant at the α = .05 level

Years Taught and Rank

An equal number of associate and assistant professors (22.8 percent each) were the majority of respondents. Nearly one-third (32.9 percent) of the faculty members who participated in the online survey have taught between six and nine years. Faculty members with fewer than 5 years of teaching were more likely to have had some personal experience with taking online courses based on more recent graduation from their respective colleges. Faculty with greater than 5 years of teaching were less likely to have taken online courses, and therefore have less experience with designing course materials for them. Additional research would be necessary to determine if the number of years of teaching relates directly to personal experience with online courses.

As with Tenure, the number of Years Taught or Rank of an educator had no significant difference in their knowledge of copyright and fair use laws. This variable was divided into two groups representing Assistant/Associate Professors and All Others based
on those who were tenure-track and would possibly achieve a higher rank in the future, and those who are non-tenure-track. Number of Years Taught (Table 4.11) and Professional Rank (Table 4.12) are shown below. Tables 4.11 and 4.12 indicate the range of scores earned by number of years taught and by professional rank, respectively, as well as indicating the highest and actual score for individual variables.

Table 4.11 Comparison of copyright/fair use knowledge by number of years taught

<table>
<thead>
<tr>
<th>Variable</th>
<th>N</th>
<th>Mean</th>
<th>SD</th>
<th>N</th>
<th>Mean</th>
<th>SD</th>
<th>Pr&gt;F</th>
<th>ES</th>
<th>Best Possible Score</th>
<th>Best Actual Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Text</td>
<td>39</td>
<td>4.05</td>
<td>3.06</td>
<td>24</td>
<td>3.00</td>
<td>2.67</td>
<td>0.1702</td>
<td>0.5171</td>
<td>15</td>
<td>14</td>
</tr>
<tr>
<td>Instructing use of Text</td>
<td>40</td>
<td>2.28</td>
<td>1.28</td>
<td>24</td>
<td>2.21</td>
<td>1.32</td>
<td>0.8426</td>
<td>0.0761</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Image</td>
<td>40</td>
<td>2.55</td>
<td>2.54</td>
<td>24</td>
<td>2.17</td>
<td>2.22</td>
<td>0.5430</td>
<td>0.2253</td>
<td>21</td>
<td>3</td>
</tr>
<tr>
<td>Instructing use of Image</td>
<td>40</td>
<td>1.13</td>
<td>1.28</td>
<td>24</td>
<td>1.33</td>
<td>1.20</td>
<td>0.5228</td>
<td>-0.2280</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Audio</td>
<td>40</td>
<td>2.40</td>
<td>2.09</td>
<td>24</td>
<td>2.63</td>
<td>2.36</td>
<td>0.6920</td>
<td>-0.1459</td>
<td>17</td>
<td>5</td>
</tr>
<tr>
<td>Instructing use of Audio</td>
<td>40</td>
<td>0.30</td>
<td>0.72</td>
<td>24</td>
<td>0.41</td>
<td>1.02</td>
<td>0.5946</td>
<td>-0.1762</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Policy</td>
<td>40</td>
<td>1.35</td>
<td>1.19</td>
<td>24</td>
<td>1.71</td>
<td>1.23</td>
<td>0.2539</td>
<td>-0.4207</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>Aware</td>
<td>32</td>
<td>2.34</td>
<td>0.94</td>
<td>30</td>
<td>2.67</td>
<td>1.12</td>
<td>0.2230</td>
<td>-0.4514</td>
<td>6</td>
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</tr>
<tr>
<td>Score</td>
<td>32</td>
<td>13.09</td>
<td>8.48</td>
<td>30</td>
<td>14.67</td>
<td>8.39</td>
<td>0.4660</td>
<td>-0.2649</td>
<td>88</td>
<td>35</td>
</tr>
</tbody>
</table>

*Significant at the $\alpha = 0.05$ level
Table 4.12 Comparison of copyright / fair use knowledge by professional rank

<table>
<thead>
<tr>
<th>Variable</th>
<th>N</th>
<th>Mean</th>
<th>SD</th>
<th>N</th>
<th>Mean</th>
<th>SD</th>
<th>Pr&gt;F</th>
<th>ES</th>
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* Significant at the $\alpha = 0.05$ level

Colleges

The institution under research lists 13 Colleges, a cross-discipline Honors, and a Mental Health Institute. On this survey, the category for Medical was not differentiated, and included departments of Health Sciences, Medicine, Nursing and Public Health.

While faculty members representing all departments were invited to answer the survey, participants from Arts & Sciences (n=18), Education (n=14), Engineering (n=7), Business (n=8) and Medical (n=10), Marine Science (n=3), Computer Science (n=2) responded. No responses were reported from the departments of Architecture and Fine & Performing Arts.

Colleges with fewer than five participants (Marine Science, Computer Science) were omitted from this category, as the results would not be representative of their...
departments. The remaining five colleges, Arts & Sciences (A&S), Education (EDU), Engineering (ENG), Business (BUS) and Medical (MED) are represented in Tables 4.13a and 4.13b. As noted, there is no significant statistical difference between these departments (p< 0.8470).

Table 4.13 ANOVA of copyright / fair use knowledge by college

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* Significant at the $\alpha = .05$ level

**Formal Copyright and Fair Use Training**

On a scale of 1 to 5, with 1 being uninformed and 5 being expert at copyright and fair use applications, more survey participants than not recorded a mid-range score of 3 (30.4 percent). Most faculty members had received no specific copyright training (70.9 percent). The majority of participants received no formal copyright or fair use training (70.9 percent). Analysis was done to determine if this group had significant differences. Means and standard deviations for all variables are shown in Table 4.15, which also indicates the range of scores earned by those who received formal copyright/fair use training, as well as indicating the highest and actual score for individual variables.
Table 4.15 Comparison of copyright / fair use knowledge by formal copyright training

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* Significant at the α = 0.05 level

Differences were found in three areas: the use of Text (DF = 1, Model = 60, F = 6.00, p = 0.0172), Instructing students in use of Audio (DF = 1, Model = 61, F = 4.52, p = 0.0375) and Aware[ness] (DF = 1, Model = 61, F = 5.68, p = 0.0203), which are shown in Tables 4.16, 4.17 and 4.18 respectively.

Table 4.16 ANOVA of text from others' web pages by formal copyright training

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* Significant at the α = .05 level
Table 4.17 ANOVA of use of instructing students in audio use by formal copyright training

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* Significant at the $\alpha = .05$ level

Table 4.18 ANOVA of awareness by formal copyright training

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* Significant at the $\alpha = .05$ level

No significant differences were found in how educators taught their students about using text on web pages – Instructing students in use of Text (F(1,61) = 0.22, p< 0.6374), Image (F(1,61) = 2.27, p< 0.1372), Instructing students in use of Image (F(1,61) = 0.33, p< 0.5688), Audio (F(1,61) = 0.90, p< 0.3470), or their knowledge of the institution’s Policy (F(1,61) = 0.03, p< 0.8658).

Focus Group Findings

To enrich the findings of the quantitative data, the author employed a mixed method approach by conducting a qualitative component. Three focus groups, each consisting of eight members of the faculty for a total N=24, were formed.

Participants

All participants were invited by email to join one of three focus groups scheduled at varying times and on varying days in a Blackboard portal. Participants were selected for invitation following review of all faculty member web pages accessible from the
University’s Academic Department web page. If online course materials were indicated by hyperlink to the name of the faculty member, they were invited to participate.

Nearly 500 email invitations were sent to individuals’ listed email addresses. Thirty-two faculty members agreed to participate in the online focus group. Of those, only 17 were available to participate during the scheduled days and/or times. Due to the lower than expected number of participants, two focus groups were conducted as planned, and the remainder of participants was interviewed via electronic mail (email) using the same questions posed to the groups.

“Focus groups often bring out users’ spontaneous reactions and ideas through the interaction between the participants and have the major advantage of allowing observation of some group dynamics and organizational issues” (Nielsen, 1993, p. 214). However, Morgan (1997), writing for Sage Publications’ Qualitative Research Methods Series, emphasizes that analysis of a focus group discussion as a dynamic group and as individuals is acceptable, since discussion comes from the individual participants within the group. Expanding on this advice, Morgan asserts that analyzing the group’s contributions “must seek a balance that acknowledges the interplay between the group as a whole and the individuals that make up the group” (1997, p. 60).

**Focus Group Setting**
Participant discussion was recorded in Blackboard’s Virtual Classroom tool, copied and pasted into Microsoft Word XP, and saved as a Rich Text Format (RTF) file for importing into QSR NVivo 2.0, an attribute coding and analysis software program. Once in NVivo, coding nodes were constructed based on the coding schema previously tested. Additional nodes were added as the project went through analysis.
Coding schema attributes (Appendix E) were developed “from scratch” by the researcher as a preliminary list of key words or phrases along with representative definitions, as no attributes existed for this subject area. Guidelines defining the attributes and directions to use the lists were then provided to two independent coders for assessment. Coders were asked to suggest additional codes/definitions if they determined a need. Coding schema were adjusted to include the suggested phrase, “Permission – the authority to use resources created by others through their permission.” The codes, “communication media” and “authoring tool,” were dropped as no responses were noted for them. A concrete representation of a construct; a way of counting and measuring behaviors was then conducted by adding each observance of a specific code. Attributes were then measured for reliability using Cohen’s Kappa (Cohen, 1969) for agreement between two raters. Results of the Kappa (0.944) are shown in Table 4.19 and are interpreted as satisfactory (> .70).

**Table 4.19 Cohen’s Kappa Results of Agreement Between 2 Independent Raters**

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Focus Group Delivery Method Observations

Focus group research centers on observing the interactions among members of the group as well as individual contributors (Morgan, 1997). Unlike face-to-face focus group meetings, this research project was conducted in a more anonymous synchronous online setting using the Blackboard portal. Possibly as a result of the format, participants failed to interact with each other. They responded to questions as if they were in one-on-one interview mode with the researcher.

Several participants had never used the Blackboard Virtual Classroom prior to this study. They enjoyed exploring some of the tools for the Whiteboard area of the window, such as drawing lines and shapes of various colors. One of the respondents remarked about the chat feature, “I love this and can’t wait to use it with my students.” Several were concerned with their typing speed and skills, but were assured that grammar, spelling and typing accuracy were not being measured. Participants were also told “1) I’d like to encourage everyone to type as long or as short a response as you like; 2) anyone can type a response at any time; 3) if we wander too far away from the topic, I will try to guide us back to the main subject; and 4) you do not have to type a response if you don’t have one.” This seemed to allay any fears of being recorded in Blackboard’s archive.

One of the main benefits to using the Blackboard Virtual Classroom is that it enables archiving of the synchronous chat. The archive is stored in text format, which can be used by any word processing application and which represents the content accurately for copying and pasting for later analyses.

Focus Group Questions and Results

Questions posed to the participants were then analyzed to determine if general web design training and specific copyright/fair use training were present, and to determine if
and under which circumstances post-secondary educators were deterred from copyright infringement. As sessions progressed, Focus Group Question #12 below emerged and was added to determine if future copyright and fair use training would be useful and how the training should be made available to the faculty members.

Following are the questions posed to the participants and a summary of patterns and common themes that emerged in response to the questions posed by the researcher:

1. **Please give us a brief biographical description to introduce yourself to the rest of us. Tell us which department, number of years teaching, something about how you’ve used course materials online, etc.**

   All participants gave details about themselves, indicating the courses they teach, the length of service as a university faculty member, and their respective departments: “I teach several research methods courses in psychology; I teach a technology integrations course; I teach marine science courses; I am an assistant professor in computer science; …design online courses not only for myself but work with other faculty to create their courses as well; I have been providing the course content online for more than five years now; At this time, I don’t have a web course; I’ve been teaching for over 12 years but I’m new to the business of developing online instruction; I have been an educational copyright specialist for over 20 years.” Responses indicated a broad range of departments and differences in length of service, as expected at a large university. In addition, the researcher noted that these faculty members consider themselves as actively involved in developing their own and/or assisting others with online content.

2. **What, if any, is the nature of any formal training in copyright and fair use policies have you had?**

   Responses ranged from, “I’ve had training at Stetson U. Copyright, Patents & Trademarks class and various workshops on all kinds of copyright topics; I am generally
familiar with ‘copyright rules’ since I often lecture on intellectual property” from the one person who identified himself as an expert, to “I’ve had no formal training.” Two participants indicated they had “sat in on some national conference sessions” that covered information on copyright and fair use guidelines. The main theme that emerged from the majority (14) of respondents indicated no formal training specifically on copyright and fair use. All but one of the remainder (nine) had some web design training that mentioned fair use guidelines. Of the nine who had web design training, all reported they were unsure of the guidelines, but would ask for assistance from a university source. The lack of formal training was expected, as most faculty members are not trained as copyright specialists in addition to their educational specialties.

3.  **Has any of your training been specific to this University’s policies on copyright and fair use for online content?**

Since the university under study offers various courses on web instructional design and Blackboard portal use, the researcher expected that some amount of copyright and fair use knowledge would be covered in these workshops. Positive responses from three participants included: “I heard something about it during a Blackboard training session; When I was taking the multimedia course about three years ago, we had to do a Web Quest on fair use and we talked about it in class; Yes, currently taking a distance learning course about how to develop online courses.” Negative comments from 11 additional participants included, “If we covered that in my web design workshop, I might have just forgotten; No, although I did once read some of the [university] policies in this area due to a grant; No I haven’t had any training specific to [University] policies on copyright and fair use and I would have to say that my understanding of [University]’s policies on fair use of copyright materials is very low.” The remainder of participants (n = 10) did
not respond to this question. In general, this question indicated a low rate of awareness due to the lack of formal training.

4. *Tell us something about that training and if you felt (feel) satisfied with the amount of information you were given.*

From responses given in both focus groups and through email, nearly all the respondents (n = 19) were not satisfied with the amount of specific copyright and fair use information they were offered by the university under study: “It was new to me and I didn’t really think about if was enough or not; I would guess that someone who knew nothing about copyright might have a problem; I was still left with the feeling of insecurity regarding my use of copyright materials in my online course; The [University]’s policy repeats standard verbiage on copyrights as I recall and did not appear to be particularly helpful; I was trying to track down someone in the patents office to copyright personal material and it has been slow going.” Only one participant responded, “Yes, I was satisfied at the time.”

The themes of uncertainty about fair use rules in general, including who to contact at the university about them are seen throughout the online discussion in response to many of the questions. Dissatisfaction with easily accessible guidelines underscores the need for both highly visible, easy-to-use guidelines and ongoing instruction in copyright / fair use resources.

5. *Where specifically would you get information about the University’s copyright/fair use policies? Would you speak with a particular person, and if so, who would that be? Would you try anyone/anywhere else?*

This series of questions were aimed at finding if faculty members could identify the University’s library resource personnel as the correct response or if they would rely on some other source inside or outside the University. As with Question 4, faculty members
in the discussion groups indicated they were uncertain of locating appropriate sources of information on fair use. Focus group and email respondents differed only slightly on where to obtain policy information. Responses ranged from “I don’t know anyone specifically; I know I have heard of them, but I don’t know specifically where to find it or what it says; I’d go to the Division of Sponsored Research and the Patents office,” to knowing a specific person’s name at the library as the central resource for this University. For the majority (n = 21) of respondents who did not know a resource’s name, they did know to contact the university’s library for help, rather than some other office such as the Legal Department or Patent and Trademark office. The Legal Department and Patent and Trademark offices refer inquiries to library resource personnel most familiar with copyright and fair use policies.

6. How easy/difficult would it be to find the University’s policies online?

The university under study has published a web page that provides its copyright and fair use guidelines as well as hyperlinks to other online sources of information about intellectual property law. To find the copyright/fair use page, one must have experience with Internet searching skills to locate it from the University’s home page, or have familiarity with the University’s Library web page. Since all of the respondents indicated they were at least somewhat comfortable (through their use of email or the Blackboard portal) in using the World Wide Web for searching, this question would reveal two areas of interest, 1) do faculty members know if the University’s copyright and fair use information is available online, and 2) is the online information readily available? One respondent stated, “I just went to the [home page] website and searched for copyright policies and only got one hit that was unrelated to the topic.” Four others reported they knew, “There is some material online but I am not sure that much of it would be
particularly helpful to the average professor.” One respondent stated, pragmatically; “To those familiar with the website, rather easy, to those not familiar with it, not easy.” The lack of easy accessibility to copyright/fair use information was shown in this statement from one individual, “I just took a look at the virtual library, but it didn’t jump out at me.”

7. On a scale of 1 to 5, with 1 being lowest, how would you rate your level of understanding of the University’s policies? Please tell us WHY you rate yourself at this level.

Nearly three-fourths (72 percent) of the respondents rated themselves as a “1” on this scale, attributing the low level to “Not much experience; I know I have heard [university]’s policies, but I don’t know specifically where to find it or what it says.” Only one respondent rated herself as a “2,” stating, “…because I just know enough to feel safe about my current materials. I don’t actually know much about the policy itself.” The respondent who rated himself as a “4,” said it was “…because I have a law degree but do not specialize in copyrights.” None rated themselves as a “3” or a “5.”

8. What does “infringement” of copyright and fair use mean to you? Please give us your informal definitions and any consequences you think might happen if someone was caught infringing.

This question was included to test the knowledge of these respondents. Respondents said, “Copying something for profit. Copying something without paying for it when you are supposed to pay for it. You might have to take it down or pay a fine; I think the essence of infringement means that one’s actions have somehow diminished the potential or actual rewards that a person or organization would have accrued; Unlawful use of copyrighted materials – penalties could be fines, jail or both; Fair use is that for educational purposes, in academic settings, we are able to use things for educational
purposes without paying royalties. I suppose that infringement means that you are not in compliance; Copyright infringement refers to using material belonging to someone else without getting their approval to do so; Infringement of copyright means usage of software/ideas for purposes in which either there is no acknowledgement or where there is commercial gain involved. A [university] faculty member if caught infringing would risk a serious warning and in spite of which if persists may face a disciplinary action.”

These responses appear to combine the Merriam-Webster’s definition of plagiarism, “To steal and pass off (the ideas or words of another) as one’s own: use (another’s production) without crediting the source” with a generic definition of infringement, “To encroach upon in a way that violates law or the rights of another.” The respondent above who suggested that “software/ideas” was included in copyright law was partially correct as software is copyright-able but ideas are not.

The definition of fair use infringement closest to this University’s came from the respondent who said he had legal training: “Fair-use (or first time/fair use) refers to that ability to use someone else’s materials for an educational purpose for one semester. During the second semester permission should be sought from the originating source.” The University’s policy covers allowed fair use for two successive semesters rather than one semester.

9. **Have you ever known about a colleague who infringed? If so, please describe the nature of the infringement, but please do NOT use the colleague’s name.**

While most respondents (22) said they did not look at colleagues’ online materials, two reported, “I’ve known many colleagues who have infringed. Most uses were duplication of textbooks, journal articles, cartoons, workbooks, etc.;” and “Yes, copies of a for sale product were made and distributed to a class. I have known others who have
asked me to scan materials to be used on a website under the assumption that what they
scan and put in a website is not open to the same copyright information as text materials.”
One respondent reported no infringement by colleagues, saying, “In almost every case
where articles etc., are copied, we go through Pro-Copy who gets the permission.”

10. If a colleague did infringe, what could be the consequence(s) to him/her
individually? To the department? To the university?

Respondents provided some accurate suggestions for consequences and appeared to
be concerned that their materials were in compliance. Five participants said, “I suppose
there could be some legal action; Financial consequences, mostly; Cease-and-desist
letters, legal action to infringer and/or the university; Faculty members could be sued
legally, fined and dismissed from employment (or reduced in academic status). The
University can be fined extensively. Departments can be fined and audited; I imagine
they could include some kind of censure at the provost level.” All of these responses are
correct suggestions as they are available to the United States court system. They indicate
a sense of deterrence by these faculty members through a decision-making process. This
also points to a fear of apprehension and punishment, enhancing the deterrence factor.

11. Over the past 12 months, was there a time when you were undecided about
using copyrighted materials as part of your own web course content? Please
describe the situation and how you reasoned through it.

To establish a decision-making capability, this question was included. Only seven of
24 participants responded to this question. Three reported they use no others’ work as
part of their online content. One respondent said, “Now that we’re talking about this, I
may actually have something there that I shouldn’t. I need to check and if it is, take it
down.” By virtue of this online discussion, she found an awareness of copyright she had
not previously considered. Two faculty members reported, “The only copyrighted
material that I have put on the website for my students was a few chapters of the textbook when it was out of print and the publisher gave us permission to post a few chapters for a limited amount of time;” and “I mostly use my own materials, but I do have some materials that have permission granted. I also use many resources that exist in the public domain as links.” Expressing a sense of pressure to prepare for the beginning of a new semester, another said, “I have the sense that many faculty mean well with regards to obtain copyright approval for materials, but believe they simply haven’t time to do so. Speaking personally, so much of my time over the past 10 years seems to have been caught up with converting overheads to power points and power points to Web sites. If you’ve taught before, you know there’s incredible pressure to be ready when the class starts (not to mention pressures related to research and publication).” Limited time to prepare online course materials occurred in 2003 due to updating the portal version and the timing of that replacement by the department controlling the portal change-over. In addition, most participants reported they re-use materials online they had originally prepared for classroom use.

12. Is there anything you’d like to recommend that this University do to prepare developers of online content better in the area of copyright/fair use policies?

Question 12 was added to the original 11 questions during the first focus group session due to this researcher’s sense that there was some dissatisfaction with locating and obtaining information on this University’s copyright and fair use policies. It was included in the second focus group and subsequent email messages.

Searching the University’s library for copyright policy information must be accomplished off-campus through the Blackboard portal. Once logged in to the portal using an assigned user name and password, one finds a hyperlink to the University
Library, which leads to a hyperlink *For Faculty* which then displays a menu of more hyperlinks, one of which provides a *Copyright* hyperlink. Clicking this last hyperlink displays a page of 15 copyright information hyperlinks, one of which yields this University’s Policies and Procedures Manual. The amount of clicking hyperlinks may be daunting to newer portal users, possibly suggesting why many of the respondents found the information difficult to locate.

Four suggestions from the focus group members are described here: ‘I’d like to recommend that anyone who teaches at [university] be required to take a copyright workshop; The era of online instruction has clearly brought the matter of copyright approval to the surface. I think there needs to be some strategy akin to ‘damage control’ to assist faculty in getting their materials up to compliance; Some examples would help but I worry that lawyers will be overly restrictive and adversely affect the academic process; By creating a concise online description of copyright or fair usage. By providing examples of do’s and don’ts.”

In general, these themes emerged from the discussions:

- Faculty members expressed a lack of copyright/fair use training and would be receptive to information through workshops,
- Faculty members were uncertain of the explanation of the University’s copyright/fair use policies when they saw it,
- Faculty members are concerned about their online materials and want easier accessibility to the information online, and
• Faculty members with limited time for preparation of online content tend to re-use classroom materials without using additional time in checking for copyright permission.
CHAPTER 5 – SUMMARY, DISCUSSION, RECOMMENDATIONS

In the preceding chapter, the researcher presented findings on university faculty members’ knowledge of current U.S. copyright and fair use laws applied to their online course content. This chapter presents a summary of the project, quantitative data from research questions investigated, and significant findings of themes emerging from focus group discussions. An in-depth discussion of each of the findings and recommendations for further research concludes this chapter.

Summary

The purpose of this research was to determine if misperceptions of U.S. Copyright and Fair Use laws when developing online course content vary across university faculty members and how these educators are deterred from infringing existing copyright and fair use policies in developing their online course materials. Copyright and fair use are important issues in education because the process of education relies heavily on instructional materials, and now includes ever-growing Internet resources used as online course content. Additionally, at many universities, faculty members are involved in research and development of future technologies. In June 2004, Sen. Orrin Hatch (R-Utah) introduced the Inducing Infringement of Copyrights Act of 2004. According to Hatch, the bill permits persons or corporations to be held liable for infringing acts “that they intend to induce.” The bill “will chill the development, if enacted, of not only peer-to-peer technology, but wonderful new information tools yet to be devised,” Adam Eisgrau, executive director of the peer-to-peer trade group P2P United, told PC World.
Currently, civil penalties for copyright infringement can be up to $30,000 per act of infringement, or up to $150,000 per act of willful infringement. Total damages are determined at trial. As no definitive checklist of rights that must be acquired, cleared or considered exists (Bruwelheide, 1999), faculty members must depend on their institutions for providing appropriate guidelines that can easily be accessed and understood (Crews, 2001).

Using a 2-part web-based survey, the researcher designed a questionnaire to obtain general demographic information (gender, department, rank, etc.) in part 1. The second section of the survey determined how well the educators applied their copyright knowledge, resulting in a total score for correct/incorrect answers that indicated the absence or presence of misperceptions.

To further enhance understanding of the results, it was considered necessary to conduct focus group discussions about overall university faculty knowledge of copyright and fair use, as well as their ability to locate relevant university policies. Focus group discussions were held online using a synchronous, virtual chat room in a Blackboard portal. Discussions lead to first-hand discovery of how faculty members defined copyright infringement, if they knew its consequences (deterrence theory), and how or where they would obtain assistance in ensuring their work met fair use guidelines at the university under study.

The first part of the following discussion looks at the quantitative online survey, followed by a discussion of the online focus group sessions.
Discussion - Quantitative

This study presents its findings in sequence with the research questions. First, the researcher looks at Question 1:

1. *Do misperceptions for developing online course content as it relates to federal and state copyright and fair use laws, vary across post-secondary educators with regard to department, academic rank, gender, tenure or length of service?*

Demographic data were gathered in the first section (Demographics) of an online survey. Misperceptions were measured by providing a series of questions in the second section (Online Materials: Text, Images and Audio) of the survey that would allow the researcher to determine a total score for correct responses. If all questions in the second section were answered correctly (validated by a copyright specialist), the total possible *Score* achieved was 88 points. Details of scoring the survey are located in the Appendix.

Online survey questions were:

a. Placing copyrighted *Text* into online materials.

b. Instructing students in placing copyrighted text (*InsText*) into student online materials.

c. Placing copyrighted *Image* files into online materials.

d. Instructing students in placing copyrighted image files (*InsImage*) into student online materials.

e. Apply knowledge to placing copyrighted *Audio* into online materials.

f. Apply knowledge to instructing students in placing copyrighted audio (*InsAudio*) files into student online materials.
Gender

Of the total N=64 participants in the online survey, 51.5 percent were male (n=33) and 48.5 percent were female (n=31). These two groups were relatively even in number and reflected the general faculty make-up of the university under study (1,446 males, 1,079 females).

To assess copyright/fair use misperceptions for online course content, the researcher used the total points each participant scored on the second section of the online survey, “Online Materials: Text, Images and Audio.” While no one scored higher than 35 points of a possible 88 points, the data indicate that males’ overall Scores for copyright/fair use knowledge were higher overall (mean = 15.8 points) than females (mean = 11.53 points). One male faculty member achieved the highest Score of all participants at 35 for correct answers.

Previous studies of Internet use suggest that a gender gap existed into the mid- to late 1990s. In 1994, only five percent of users were female, but “by 2001, these gender differences had disappeared or were even reversed in the United States” when female use reached 58 percent (Ono, 2004). Results of Linda Jackson’s 2001 study of Gender and the Internet: Women Communicating and Men Searching, comparing gender differences of Internet usage, found that females used electronic mail more than did males, and males used the Web generally more than did females. When Jackson combined the two to form a measure of overall Internet use, gender differences disappeared. In support of Jackson’s research, the J. Nielsen survey (2004) indicated that males spend more time online, logged on more often and accessed more content than females, despite being outnumbered by the female Internet population by more than 5.2 million surfers. In her gender study of ethics and software piracy over the Internet, Lobel’s (2001) data suggests
that cheating behavior might be due, in part, to the sex-appropriateness of the task. Her data showed that males cheat more on “masculine” tasks than females do on “feminine” tasks. Lobel describes “computing” as a “masculine” task. Thus males in her study felt more inclined to resort to software piracy than their female counterparts. Lobel’s research also found that participants of either gender who had more computer experience used pirated software to a greater extent. Lobel’s research may point to a possible explanation for gender differences in general computing, however, this research indicated that males are more cognizant of copyright/fair use infringement than females.

Using data from a 2-tailed ANOVA with an alpha = .05, significant differences were shown for male and female faculty members at the university under study in how they use copyrighted Text - not their own work - as part of their online course content (p< 0.0338, means for males = 4.47 and females = 2.9). There is a good possibility that most educational web pages consists of textual course content and is simply transference of materials used in the classroom such as syllabi, assignments, etc., in an attempt to replicate the classroom experience online. According to Zachary and Jensen (2003), this approach is particularly attractive to teachers if online materials supplement a traditional classroom-taught course. In such a situation, no new course material needs to be created – in-the-classroom content is digitally converted for placing onto a web page. Based on this situation, if an educator normally uses others’ copyrighted text for students in a classroom, they would likely use the same copyrighted text online. This may account for significant differences in the use of Text as a variable in this study.

Gender differences also occurred in how faculty members instruct their students to use copyrighted text (InsText) in student-produced online materials (p< 0.0467) where
means show males = 2.55 and females = 1.9, and Score (p< 0.0471) where mean Scores show males = 15.8 and females = 11.53 of 88 possible points. In a study related to significance of the InsText variable, Collias, Pajak and Rigden (2003) examined barriers to student achievement in the U.S. They found that the lack of preparation in the subjects they teach (23 percent of secondary instructors are “out-of-field” teaching), was a principle cause of such a barrier. Similar to K-12 teachers who teach outside their main area of study, university faculty members hold higher degrees in specific subject areas, and unless they specialize in Copyright Law, would also be teaching “out-of-field” as they instruct their students in producing web content. Teaching out of field may indicate a weakness that the participants in this study pass along to their students.

The Images (p< 0.20), instructing the use of images in student-produced web pages (InsImage p< 0.35), Audio (p< 0.32) and instructing the use of audio in student-produced web pages (InsAudio p<0.18) variables did not indicate a significant difference for Gender. This may be due to the large amount of discussion of unauthorized use of copyrighted images or audio in news forums such as the well publicized case of A&M Records, Inc. vs. Napster, Inc. (D.C. CV-99-05183-MHP) based on the Digital Millennium Copyright Act (DMCA).

Tenure

The researcher expected that non-tenured faculty members would score higher than tenured members based on the tenet of deterrence theory which holds that people engage in criminal behavior after carefully and rationally considering “costs” and “benefits” and that, as a result, non-tenured faculty attempting to earn tenure would find the cost too high to infringe. The findings of this study do not support this. Of those responding to the
survey, 17 males (26.5 percent) and nine females (14.1 percent) held tenure. Tenured faculty members achieved a median Score of 16.67 points, while non-tenured faculty members scored a median of 16.16, and a standard deviation of 0.3451. Both tenured and non-tenured Scores were low overall, and led to a finding of no significant difference (p< 0.96). Several U.S. universities such as University of Oregon and Virginia Commonwealth University encourage web usage by their faculty as a method of supporting effort in terms of tenure-related credit or consideration for merit-based pay increases on the basis of excellence and creativity in teaching. Since the university under study does not specifically include web usage as part of their criteria for promotion to tenure in its Faculty Handbook, earning tenure may not be a motive among faculty members for increasing their use of online course content, and thus, acquiring better knowledge of copyright / fair use.

**Number of Online Sections Taught**

Faculty average workload of distance learning courses reported by the National Center for Educational Statistics was 2.9 sections (2001). The researcher expected to find that teaching a larger number of Sections taught online would give faculty members greater exposure to copyright/fair use, which would then provide greater knowledge of the guidelines, but this was not the case in this study. As with the Tenure variable, the number of Sections taught online at this institution was not statistically significant for Scores (p< 0.72) or any of the individual variables. Respondents who taught from one to three Sections online earned a median Score of 16.46 points. Four male (6.0 percent) and four (6.0 percent) female faculty members taught four or more online Sections with a median Score of 16.75 points. One respondent did not supply an answer to this question.
Number of Years Taught

During the 1980’s, U.S. courts placed computer hardware and software copyright issues within the context of classic copyright law, resolving many of the questions regarding software code, menus, etc. The Internet became available to the public in the early 1990’s, creating new copyright and fair use issues. According to most Internet copyright law specialists (Crews, 2002, Gasaway, 2000, Perlmutter, 2001, and Werry, 2001), the courts are only beginning to explore if educational copying of digital text, images, or audio files constitutes a fair use of copyrighted material. To compound the problem, an ever-changing landscape of Internet copyright law for digital course materials leads to misperceptions and confusion for those who are attempting to develop online content for students (Crews, 2002).

With many universities promoting the use of digital technologies and the Internet for teaching, faculty who have some personal experience with online learning may be more likely to develop their own online course materials, initiating and testing some of the questions surrounding Internet copyright law. Newer faculty members who have recently graduated from their own programs of study may be more likely to have had a greater exposure to online courses, encouraging them to produce their own online materials. Further research is needed to determine how much personal experience faculty members at the university under study have had with taking online courses before developing online materials.

As with Tenure and Sections taught, length of service (number of Years taught at this institution) indicated no significant difference in Scores (p< 0.47). In this study, 15 male (23 percent) and 17 female (27 percent) respondents taught for five or fewer years. Their median Score was 16.58 points of a possible 88. Eighteen males (28 percent) and 12
females (19 percent) taught for greater than five years at this university, scoring a median of 16.67 points, only slightly higher than the less experienced faculty members.

**Colleges**

Survey respondents included faculty members from the colleges of Arts & Sciences (n=18), Education (n=14), Fine & Performing Arts (n=2), Engineering (n=7), Marine Science (n=3), Computer Science (n=2), Business (n=8) and Medical (n=10). Medical included representatives from Health Sciences, Medicine, Nursing and Public Health. The researcher omitted the following colleges from the findings as the number of survey respondents would be too small to be representative: Fine & Performing Arts, Marine Science and Computer Science.

Analysis failed to reveal a significant statistical difference among Colleges for Score (p< 0.85) or any of the individual variables. Considering that all scores were below 50 percent of 88 possible correct answers, average points for each college indicate that the Business College at the university under study achieved the highest Score (21.25 points). The researcher interpreted this result to indicate that the Business College attained the highest level of copyright/fair use knowledge of those tested. This may be due to an Internet Law course offered within this college. Slightly lower levels of knowledge are indicated by the colleges of Arts & Sciences (15.88 points), Education (16.36 points) and Engineering (20.13 points). The Medical college achieved the lowest Score (13.77 points), indicating the lowest level of copyright/fair use knowledge.

**Professional Ranks**

In most universities, promotion to a tenured rank includes review of “innovative” teaching. For example, Stanford University’s faculty handbook recommends for
consideration any pedagogical innovations or course development activities in which a
candidate has participated. The University of Wisconsin regards significant achievements
as those clearly successful, innovative developments in instructional techniques and
materials that affect a department’s academic programs. Faculty at the University of
Idaho seeking tenured ranks are asked to describe course content, materials developed in
support of teaching program, methods of teaching, use of appropriate technology, and
innovative approaches they have used. While not expressly defining these “innovations,”
one could interpret them to mean “use of the Internet for course materials” which the
same universities are promoting among their faculty members. Once tenure has been
earned, faculty members have already demonstrated their “innovative” teaching.

The professional Ranks of Graduate Teaching Assistant (n=3, Score=14.00 points),
Instructor (n=13, Score=17.46 points), Adjunct (n=1, Score=6.00 points) and Assistant
Professor (n=17, Score=15.76 points) were reduced together as Group 1, as these faculty
members have not earned a tenured rank. Scores for the Ranks of Associate Professor
(n=17, Score=18.59 points) and Professor (n=12, Score=14.92 points) were reduced
together as Group 2. One participant did not provide an answer to this question.

Group 1’s median total score was 13.31 points compared to a somewhat higher
Group 2 median score of 16.75 points. The findings point to Group 2 having a slightly
greater knowledge of copyright/fair use. No significant difference (p< 0.76) in Score was
indicated among professional Ranks of faculty members.

**Formal Web and Copyright/Fair Use Training**

According to the director of a technology support system for faculty members at the
university under study, one workshop is conducted by the library that touches on
Copyright/fair use is mentioned in additional workshops on content and multimedia, in which participants discuss processes used by the library for electronic reserve, outside copy-shop policies that require copyright approval and relate these to fair use issues with materials that the instructors might use in their courses. Instructors in the faculty support system suggest that participants contact a specific copyright specialist in the library for further advice. The university’s academic affairs division also offers faculty workshops on various topics of web design and provides online course syllabi. None of the academic affairs syllabi include information about using copyrighted materials belonging to other people or fair use guidelines/policy from the university under study. Additional research would need to be conducted to determine if copyright/fair use was discussed in the academic affairs workshops, but omitted from the syllabi.

Despite the availability of on-campus workshops, seventy percent (n=40) of survey participants received no formal Web Design Training at this institution and Scored a mean of 15.42 points. The remainder of participants (n=24) did receive formal Web Design Training from the institution and Scored 17.15 points, indicating a higher awareness of copyright/fair use guidelines or university policy on these issues. This appears as a significant difference in the variable,Aware[ness] at p< 0.0016.

As with formal Web Design Training, the researcher examined survey responses for formal Copyright Training. Ninety percent (n=54) of survey participants reported receiving no formal Copyright Training or policy information from the university under study, and Scored a mean of 15.81 of a possible 88 points. Faculty members who did receive formal training in copyright/fair use Scored a mean of 18.56 points.
Statistically significant differences were indicated in the variables of Text (p< 0.0172), instructing students how to use audio for their web pages (InsAudio) (p< 0.0375) and Awareness (p< 0.0203) for those who participated in formal Copyright Training.

**Quantitative Implications**

Survey questioning was designed to determine if misperceptions were present by measuring a total score for correctly assessing the amount and length of time copyrighted works may be used in online course content. Variables measured scored differences based on gender, professional rank, tenure, etc. Responses to research Question 1, Do misperceptions for developing online course content as it relates to federal and state copyright and fair use laws, vary across post-secondary educators with regard to department, academic rank, gender, tenure or length of service?, revealed that none of the participants measured in this study were expertly successful in making knowledge-based decisions on the amount of copyrighted text, images, audio, etc., for use in online course content, or the length of time to use the content.

Each variable contributed equally to low level of copyright/fair use knowledge, with the exception of formal training in web design or copyright workshops provided by the university. This would imply that increasing the visibility of and attendance at existing workshops may increase the faculty members’ awareness and knowledge of the university’s copyright/fair use policies.

**Quantitative Discussion Summary**

The overall low Scores (highest = 35 of a possible 88 points) for all variables indicated to the researcher that the majority of faculty members are only partially able to
apply correct copyright / fair use knowledge to the majority of Materials questions on the
survey. Based on the data, the researcher concludes that:

i. Female faculty members have a slightly higher misperception rate than males
   for applying copyright and fair use knowledge to their online course materials,
   especially in the area of text.

ii. There is no significant statistical difference between scores for faculty
    members with tenure or non-tenure earning positions.

iii. There is no significant statistical difference between scores for faculty
     members who teach a greater number of online sections for which they have
     prepared course materials.

iv. There is no significant statistical difference between faculty members who
    have taught for a greater length of time at the university under study.

v. The Business college achieved the highest level copyright/fair use knowledge
    by scoring the greatest number of points, while the Medical college scored the
    lowest number of points; however, there was no statistically significant
    difference among all colleges.

vi. No statistical significance is indicated among scores for professional ranks.

vii. Data indicate no statistical significance among scores of those faculty
     members who have participated in formal web design or copyright/fair
     training given by this institution. For those who have had any web or
     copyright training, there is a significant difference in the variables of Text,
     Instructing Audio and Awareness levels of copyright/fair use.
Discussion – Qualitative

To expand understanding of the quantitative data, a qualitative phase of the study was conducted. The second question in this study examined how ethics and deterrence theories apply to responses from focus groups regarding their use of copyrighted online course content. The question was:

1. Are post-secondary educators deterred from infringing existing copyright and fair use policies in developing their online course materials? If so, what is their decision-making process for deterrence?

This grounded theory research question was included as a reflective examination of participants’ ethical decisions regarding using copyrighted materials as part of their online course content. To do this, the discussion asked for knowledge of this university’s policies, national guidelines and consequences for infringing. Following a self-introductory question answered by each participant, specific questions during the discussion included:

a) What, if any, is the nature of any formal training in copyright and fair use policies have you had?
b) Has any of your training been specific to this University’s policies on copyright and fair use for online content?
c) Tell us something about that training and if you felt (feel) satisfied with the amount of information you were given.
d) Where specifically would you get information about the University’s copyright/fair use policies? Would you speak with a particular person, and if so, who would that be? Would you try anyone/anywhere else?
e) How easy/difficult would it be to find the University’s policies online?
f) On a scale of 1 to 5, with 1 being lowest, how would you rate your level of understanding of the University’s policies? Please tell us WHY you rate yourself at this level.
g) What does “infringement” of copyright and fair use mean to you? Please give us your informal definitions and any consequences you think might happen if someone was caught infringing.

h) Have you ever known about a colleague who infringed? If so, please describe the nature of the infringement, but please do NOT use the colleague’s name.

i) If a colleague did infringe, what could be the consequence(s) to him/her individually? To the department? To the university?

j) Over the past 12 months, was there a time when you were undecided about using copyrighted materials as part of your own web course content? Please describe the situation and how you reasoned through it.

k) Is there anything you’d like to recommend that this University do to prepare developers of online content better in the area of copyright/fair use policies?

About 500 faculty members from all departments at the university under study were invited to participate in a Blackboard synchronous chat. Seventeen faculty members participated, with seven in one group and 10 in a second. Chats were held on two separate dates, one week apart. Additional comments were received from electronic mail (email) messages from seven others who wished to participate, but were unable to attend the online chat sessions.

Compliance with copyright/fair use standards is based on general ethical and moral conformity. To understand under what conditions educators would be willing to transgress (or not) with established codes of ethics, the researcher examined focus group questions and responses for evidence informed by Virtue, Deontological and Consequentialist ethics theories as well as various Deterrence theories.

Virtue theory – the ability to know when and how best to apply moral perspectives (practical wisdom) – was informed by Questions b), c), d) and g) above. Of the participants, more than half (n=14) indicated they had no formal web design or
copyright/fair use training. Few could identify a specific place or person from whom to obtain assistance, as 10 participants failed to respond to the question.

Questions g), h) and i) above were based on Deontological theory – the conformance to “right” behavior and the intention behind it. One-third (n=9) reported they were unsure of this university’s policies, providing negative comments regarding their understanding of university materials they had read on copyright/fair use.

Despite the lack of training and knowledge on copyright/fair use, these educators spoke about a desire to behave in a manner that respects the rights of others. Evidence of Consequentialist and Bandura’s Social Learning theories involving ethics was noted through comments regarding consequences for infringers, such as “penalties could be fines, jail or both.” Being able to identify infringement consequences also supports Deterrence theory, in that these faculty members recognized the threat of punishment. In support of Matthew Scheider’s (2001) and Steven Levitt’s (1998) research, educators participating in this study received “new” information from each other during the discussion, altering their perceptions of copyright infringement, with some respondents checking their own web sites during the discussion to make sure they were in compliance.

Qualitative Implications
Chat discussion results reflected uncertainty and confusion about university policies, and spoke to the lack of easy access to those policies. Because of the legal challenges, most copyright experts (Crews, 2003, Willard, 2003) believe there is no justification for compromising on standards within decision-making processes involving copyright and fair use.
The literature points to the failure of many universities to provide clear guidelines for fair use in the context of online course materials (Crews, 1996, Willard, 2003). Discussion about this university’s copyright and fair use policies also indicate a lack of availability of clear and accessible guidelines, in support of the literature. This implies that the university under study should attempt to provide better access and more concise definitions of their policies.

The TEACH Act (Section 110(2) of the Copyright Act), which allows educators to use text, images, audio, video and recorded dramatic performances for web-based distance learners in a similar manner and amount as used in classrooms, was not discussed by these participants. Perhaps because the TEACH Act has yet to be tried in the U.S. court system, the university under study may wish to evaluate incorporating this and other pertinent laws for using copyrighted materials in online course content.

**Qualitative Summary**

As indicated from the focus group responses, faculty members at this institution do have the inclination to behave in a professionally ethical manner that deters them from infringing even when their knowledge of copyright/fair use policies is incomplete. Without **clear and easy** access to the university’s copyright and fair use guidelines, it is impossible for faculty members to make expert decisions on including copyrighted materials in their online content, even if they want to apply moral principles.

In general, these themes emerged from the discussions:

- Faculty members expressed a lack of copyright/fair use training and would be receptive to information through workshops,
• Faculty members were uncertain of the explanation of the University’s copyright/fair use policies when they saw it,
• Faculty members are concerned about their online materials and want easier accessibility to the information online, and
• Faculty members with limited time for preparation of online content tend to re-use classroom materials without using additional time in checking for copyright permission.

Most of the focus group participants perceived the seriousness of consequences for infringement and expressed an interest in the “right behavior” for obtaining information about their online materials to avoid those consequences.

**Challenges**

Using the Internet to conduct both quantitative and qualitative research was a concern due to its possible unreliability and user Internet literacy for this format of questions. Participants unfamiliar with using the Internet for research projects may have participated if they had this type of online experience in the past or greater Internet literacy. Misperceptions for correctly using online content that is copyright-protected were identified through an online survey only. No paper surveys were used, which may have yielded a greater rate of participation.

All focus group participants received specific instructions to reach the Blackboard organization and its virtual classroom (chat room). Even when they reported a comfort level with using other features of the Blackboard portal, faculty members seemed to be less comfortable with the chat room feature. A “practice” chat may have alleviated some of their discomfort.
Scheduling enough faculty members as focus group participants proved to be the major difficulty. Within the initial email invitation to participate, the researcher offered three possible dates/times, allowing each participant to select a most favorable time for their schedule. The researcher received about 20 messages declining to participate, but received no messages accepting or declining from an additional 432 possible participants.

Interaction among participants through dialog was another challenge. While participants were invited to interact with one another for the discussion, they did not, preferring to treat the discussion as a “one-on-one” interview with the researcher acting as “interviewer” rather than as group moderator. Therefore, no group interaction could be reported. This may have been due to the novelty of using the Blackboard virtual chat room feature as the method of holding the focus group discussion. Online chatting has, however, been used successfully by others as a form of focus group research (Neilson, 1993). The literature suggests that the moderator’s quality of focus group facilitation may have contributed to this effect (Mintzberg, Raisinghani, and Thoret, 1976; Morgan, 1997).

Another challenge was a delay in response time to some of the questions during the chat sessions. Participants generally responded to a question thread before another question was posed, but occasionally delayed typing a response until others had completed their comments. The delayed effect resulted in a response to an earlier question appearing as a response to a later question. This was possibly due to low typing skills or high reaction time for reading online chat messages. Some participants may have found this confusing, but none mentioned the delay. In transferring the recorded chat as a
text file from Blackboard to NVivo, the researcher was able to rectify the delay by cutting and pasting responses into a more sequential order.

**Generalizability of Results**

Standard definitions of generalizability concern the internal validity of the research, that is, results that are applicable only to the group tested. In a critique of the 2001 Elementary and Secondary Act which contains narrowly conceived views of scientific research, Lowenstein and Damico (2002) explain that researchers’ questions are not just about the consequences of specific pedagogical moves or techniques or materials; they represent the more general because they stem from the intersection of theory and practice.

Their conclusion allows for theory and practice to develop interactively. As with other studies, the results of this research may not be generalized beyond the particular group tested due to the following factors:

- Research questions for this research were highly reflexive and dealt with the immediate and particular contexts of a particular institution’s practice regarding copyright and fair use policies. At the time of research, this university’s official copyright and fair use policy was published on http://isis.fastmail.usf.edu/usfgc/gc_pp/genadm/gc105.htm (Appendix G). The policy information was not immediately visible and required several hyperlink clicks to various web pages to find it. In addition, no specific copyright/fair use workshops were offered to faculty, although the topic was covered as part of other web design workshops and a designated copyright specialist was available through the main campus’ library.
The goal of the researcher was to determine knowledge of current U.S. copyright and fair use laws. These laws, including the TEACH Act and the Digital Millennium Copyright Act are undergoing court challenges and changes that influence correct responses to the survey questions.

**Representativeness of Responses**

In spite of the small response rate (79 total responses, 64 of which were usable, representing 3.1 of the population) to the survey, there was some similarity in the respondents’ demographics. At the institution under study, 1,446 males and 1,079 females made up the faculty. In response to the online survey question, 32 males and 30 females reported their gender. The 2002 Fact Book reported 603 professors, of which 12 responded to the survey; 480 associate professors, of which 16 responded; 531 assistant professors, of which 18 responded; 254 instructors, of which 13 responded; and 657 other ranks were represented, of which 5 responded, for a total of n=64.

It is believed that the low response rate may have been due to the timing of the survey (offered near the beginning of a semester while educators are preparing course materials). The lack of knowledge of copyright or fair use may have been a contributing factor to the small participation. It is also possible that educators at this institution may not be concerned with this issue or prefer not to take online surveys.

**Changes to this Research Study**

The researcher recommends the following changes to this research study:

- Conduct the survey through both paper and online formats. Use of paper surveys would allow faculty members who use some web-based course
content, but who are not comfortable with responding to online surveys, to
contribute their answers, yielding a greater participation rate.

- Rather than using online focus groups, review individual case studies of
  faculty members developing their online course content. Case studies could
  yield better insight into the decision-making processes involved in deterrence
  from infringement.

**Recommendations for Future Research**

Research on this topic could continue along several paths. Qualitative case studies
could reveal additional data on the start-to-finish product an individual university faculty
member assembles for online course content, as well as the decision-making process for
determining whether to infringe or not.

Intellectual property (copyrighted material) laws continue to evolve. Recent
legislation includes the Software Principles Yielding Better Levels of Consumer
Knowledge (SPYBLOCK) Act (S.2145) to block unwanted “spy ware” software from
being downloaded to computers; the Piracy Deterrence and Education Act of 2003 (H.R.
2517) to educate the public and clarify the authority to seize unauthorized copyrighted
works; and the Consumers, Schools, and Libraries Digital Rights Management
Awareness Act of 2003 (S.1621) providing for awareness of digital technologies included
in media products. Ongoing developments in the legal area of intellectual property may
cause changes to university guidelines, which in turn, prevent all but copyright specialists
to have an expert understanding of the law. New questions should focus on awareness of
the newest legislation and ease of its accessibility through university channels.
Media evolve. Interactive Internet developments in hardware and software require continuous training in support of the changing copyright laws. The framework for changes appears to favor more oversight by institutions of their faculty members’ online course materials as more conversion of non-digital resources to digital formats occurs. Future research should include decision-making by institutions on which systems and formats they plan to develop and put in place.

Changes in access to fair use materials on secure sites are on the horizon. As the world of Internet users has discovered, with every new advance in technology comes more doors open to intrusion and misuse (Philip, 2002). Vulnerabilities and attacks disrupt service and underscore the need for some administrative oversight of course content on web sites outside of secure sites. Research on how administrators conduct their oversight of faculty members’ non-secure sites may be warranted.

Conclusion
Past research on university faculty knowledge of copyright and fair use guidelines has been anecdotal rather than factual, and most published articles have covered only interpretation of the U.S. Copyright Act: Limitations on exclusive rights: Fair use (17 USC § 107), along with guidelines for individual institutions. Quantitative data reported in this study have shown that aside from the small percentage of faculty members who have had web design training or copyright training, very few are aware of this institution’s specific copyright and fair use policies. Of the online survey respondents, the highest score for correct answers was 35 of 88 possible points. With the increase in demand for more online courses from students and administrators, faculty members from all ranks and tenure statuses are designing materials for the Internet as they would for the
classroom, perhaps in violation of current U.S. copyright laws. The TEACH Act (Section 110(2) of the Copyright Act) allows fair use of a similar quantity of copyrighted text, images, sound, etc., and length of time for online courses as for “in the seat” classroom courses, but only if certain criteria are met. But, as reported in the Copyright Crash Course (Harper, 2002, online ¶5), “There is still a considerable gap between what the statute authorizes for face-to-face teaching and for distance education. For example, an educator may show or perform any work related to the curriculum, regardless of the medium, face-to-face in the classroom - still images, music of every kind, even movies. There are no limits and no permission required. Under 110(2), however, even as revised and expanded, the same educator would have to pare down some of those materials to show them to distant students. The audiovisual works and dramatic musical works may only be shown as clips - ‘reasonable and limited portions,’ the Act says.” If the university under study meets the TEACH Act criteria, fair use specialists should work with faculty to develop materials that do meet these standards. Research into whether faculty members who are required to work with university copyright specialists are more likely to achieve higher scores than their peers without the assistance is needed.

Qualitatively, this study pointed to the themes of lack of training, a desire to comply, and urgency in designing online course materials in time for the start of a new semester as a major decision-making factor in whether to include/exclude copyrighted content. Despite these difficulties, most focus group participants reported they knew the appropriate person or department to ask for guidance, pointing to the role of deterrence theory in their decision-making. All participants were able to define some form of punishment such as risk of disciplinary action, fines and dismissal. Future studies should
look at individual case studies that follow one or more online courses from initial concept through final design and presentation to determine if infringement occurs.
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U.S. Senate. TEACH Act, S. 487, to amend chapter 1 of title 17, United States Code.  


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Appendix A: Fair Use Guidelines Proposed By the 1976 Copyright Committee of the Library of Congress (CONFU), Alternatives to the CONFU Guidelines, and Teach Act

I. Single copying for teachers – A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:
   A. A chapter from a book;
   B. An article from a periodical or newspaper;
   C. A short story, short essay or short poem, whether or not from a collective work;
   D. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical or newspaper.

II. Multiple copies for classroom use – Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion, provided that:
   A. The copying meets the tests of brevity and spontaneity as defined below; and,
   B. Meets the cumulative effect test as defined below; and,
   C. Each copy includes a notice of copyright.

Definitions

Brevity

i. Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages or, (b) from a longer poem, an excerpt of not more than 250 words.

ii. Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.

[Each of the limits of i and ii above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.]

iii. Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.

iv. “Special” works: Certain works in poetry, prose of in “poetic prose” which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph ii above notwithstanding such “special works” may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof, may be reproduced.
Spontaneity

i. The copying is at the instance and inspiration of the individual teacher, and
ii. The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative Effect

i. The copying of the material is for only one course in the school in which the copies are made.
ii. Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.
iii. There shall not be more than nine instances of such multiple copying for one course during one class term.

[The limitations stated in ii and iii above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.]

III. Prohibitions as to I and II above – Notwithstanding any of the above, the following shall be prohibited:

A. Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately.

B. There shall be no copying of or from works intended to be “consumable” in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.

C. Copying shall not:
   i. Substitute for the purchase of books, publishers’ reprints or periodicals;
   ii. Be directed by higher authority.
   iii. Be repeated with respect to the same item by the same teacher from term to term.

D. No charge shall be made to the student beyond the actual cost of the photocopying.

Agreed March 19, 1976
Ad Hoc Committee on Copyright Law Revision (by Sheldon Elliott Steinbach, Author-Publisher Group), Authoris League of America (by Irwin Karp, Counsel) Association of American Publishers (by Alexander C. Hoffman, chairman, Copyright Committee.

Alternatives to the CONFU Guidelines


Indiana University Copyright Management Center, “Checklist for Fair Use”: http://www.iupui.edu/~copyinfo/fuchekclist.html
Technology, Education, and Copyright Harmonization Act of 2001 (Engrossed as Agreed to or Passed by Senate)

S 487 ES

107th CONGRESS
1st Session
S. 487

AN ACT

To amend chapter 1 of title 17, United States Code, relating to the exemption of certain performances or displays for educational uses from copyright infringement provisions, to provide that the making of copies or phonorecords of such performances or displays is not an infringement under certain circumstances, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EDUCATIONAL USE COPYRIGHT EXEMPTION.

(a) SHORT TITLE - This Act may be cited as the `Technology, Education, and Copyright Harmonization Act of 2001'.

(b) EXEMPTION OF CERTAIN PERFORMANCES AND DISPLAYS FOR EDUCATIONAL USES- Section 110 of title 17, United States Code, is amended--
(1) by striking paragraph (2) and inserting the following:

`(2) except with respect to a work produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks, or a performance or display that is given by means of a copy or phonorecord that is not lawfully made and acquired under this title, and the transmitting government body or accredited nonprofit educational institution knew or had reason to believe was not lawfully made and acquired, the performance of a nondramatic literary or musical work or reasonable and limited portions of any other work, or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session, by or in the course of a transmission, if--

(A) the performance or display is made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of the systematic mediated instructional activities of a governmental body or an accredited nonprofit educational institution;

(B) the performance or display is directly related and of material assistance to the teaching content of the transmission;
(C) the transmission is made solely for, and, to the extent technologically feasible, the reception of such transmission is limited to--

(i) students officially enrolled in the course for which the transmission is made; or
(ii) officers or employees of governmental bodies as a part of their official duties or employment; and

(D) the transmitting body or institution--

(i) institutes policies regarding copyright, provides informational materials to faculty, students, and relevant staff members that accurately describe, and promote compliance with, the laws of the United States relating to copyright, and provides notice to students that materials used in connection with the course may be subject to copyright protection; and
(ii) in the case of digital transmissions--

(I) applies technological measures that reasonably prevent--

(aa) retention of the work in accessible form by recipients of the transmission from the transmitting body or institution for longer than the class session; and

(bb) unauthorized further dissemination of the work in accessible form by such recipients to others; and

(II) does not engage in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent such retention or unauthorized further dissemination; 

(2) by adding at the end the following:

In paragraph (2), the term "mediated instructional activities" with respect to the performance or display of a work by digital transmission under this section refers to activities that use such work as an integral part of the class experience, controlled by or under the actual supervision of the instructor and analogous to the type of performance or display that would take place in a live classroom setting. The term does not refer to activities that use, in 1 or more class sessions of a single course, such works as textbooks, course packs, or other material in any media, copies or phonorecords of which are typically purchased or acquired by the students in higher education for their independent use and retention or are typically purchased or acquired for elementary and secondary students for their possession and independent use.

For purposes of paragraph (2), accreditation--

(A) with respect to an institution providing post-secondary education, shall be as determined by a regional or national accrediting
agency recognized by the Council on Higher Education Accreditation or the United States Department of Education; and

`\(\textbf{(B)}\) with respect to an institution providing elementary or secondary education, shall be as recognized by the applicable state certification or licensing procedures.

`For purposes of paragraph (2), no governmental body or accredited nonprofit educational institution shall be liable for infringement by reason of the transient or temporary storage of material carried out through the automatic technical process of a digital transmission of the performance or display of that material as authorized under paragraph (2). No such material stored on the system or network controlled or operated by the transmitting body or institution under this paragraph shall be maintained on such system or network in a manner ordinarily accessible to anyone other than anticipated recipients. No such copy shall be maintained on the system or network in a manner ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary to facilitate the transmissions for which it was made.'.

(c) EPHEMERAL RECORDINGS-

(1) IN GENERAL- Section 112 of title 17, United States Code, is amended--

(A) by redesignating subsection (f) as subsection (g); and

(B) by inserting after subsection (e) the following:

`\(\textbf{(f)}\)(1) Notwithstanding the provisions of section 106, and without limiting the application of subsection (b), it is not an infringement of copyright for a governmental body or other nonprofit educational institution entitled under section 110(2) to transmit a performance or display to make copies or phonorecords of a work that is in digital form and, solely to the extent permitted in paragraph (2), of a work that is in analog form, embodying the performance or display to be used for making transmissions authorized under section 110(2), if--

(A) such copies or phonorecords are retained and used solely by the body or institution that made them, and no further copies or phonorecords are reproduced from them, except as authorized under section 110(2); and

(B) such copies or phonorecords are used solely for transmissions authorized under section 110(2).

\(\textbf{(2)}\) This subsection does not authorize the conversion of print or other analog versions of works into digital formats, except that such conversion is permitted hereunder, only with respect to the amount of such works authorized to be performed or displayed under section 110(2), if--

(A) no digital version of the work is available to the institution; or

(B) the digital version of the work that is available to the institution is subject to technological protection measures that prevent its use for section 110(2).'.

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(2) TECHNICAL AND CONFORMING AMENDMENT- Section 802(c) of title 17, United States Code, is amended in the third sentence by striking `section 112(f)' and inserting `section 112(g)'.

(d) PATENT AND TRADEMARK OFFICE REPORT-

(1) IN GENERAL- Not later than 180 days after the date of enactment of this Act and after a period for public comment, the Undersecretary of Commerce for Intellectual Property, after consultation with the Register of Copyrights, shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report describing technological protection systems that have been implemented, are available for implementation, or are proposed to be developed to protect digitized copyrighted works and prevent infringement, including upgradeable and self-repairing systems, and systems that have been developed, are being developed, or are proposed to be developed in private voluntary industry-led entities through an open broad based consensus process. The report submitted to the Committees shall not include any recommendations, comparisons, or comparative assessments of any commercially available products that may be mentioned in the report.

(2) LIMITATIONS- The report under this subsection--

(A) is intended solely to provide information to Congress; and

(B) shall not be construed to affect in any way, either directly or by implication, any provision of title 17, United States Code, including the requirements of clause (ii) of section 110(2)(D) of that title (as added by this Act), or the interpretation or application of such provisions, including evaluation of the compliance with that clause by any governmental body or nonprofit educational institution.

Passed the Senate June 7, 2001.

Attest:

Secretary.

107th CONGRESS
1st Session
S. 487
AN ACT

To amend chapter 1 of title 17, United States Code, relating to the exemption of certain performances or displays for educational uses from copyright infringement provisions, to provide that the making of copies or phonorecords of such performances or displays is not an infringement under certain circumstances, and for other purposes.
Appendix B: Expanded definition of the TEACH ACT S.487 and H.R. 2215

An amendment entitled, “Technology, Education, and Copyright Harmonization Act of 2001,” to chapter 1 of title 17, United States Code relating to the exemption of certain performances or displays for educational uses from copyright infringement provisions, to provide that the making of copies or phonograph records of such performances or displays is not an infringement for mediated instructional activities transmitted via digital networks by accredited nonprofit educational institutions (107th Cong., 1st Sess).

Kenneth Crews (2002) summarizes the TEACH ACT as:

*Long anticipated by educators and librarians, the new law will demand a full reconsideration of the ability to use existing copyright-protected materials in distance education. The law is a complete revision of the current Section 110(2) of the U.S. Copyright Act, and one of its fundamental objectives is to strike a balance between protecting copyrighted works, while permitting educators to use those materials in distance education. If educators remain within the boundaries of the law, they may use certain copyrighted works without permission from, or payment of royalties to, the copyright owner— and without copyright infringement.*

According to Crews (2002), this law requires educators and their institutions to take on active participation in forming policies, and making those policies available to faculty, staff and students. Benefits of the TEACH Act include the repeal of Section 110(2) that restricted performance of certain works to be received only over closed circuit television and viewed only in “classrooms;” it expands the range of allowed works and receiving locations; it allows copying and storage, but only for a “brief” period of time (no amount of time is specified). Restrictions of the new Act include:

- Policies must specify the standards to follow when incorporating copyrighted works into distance education, including the possibility of review and control by the institution;
- The institution must provide “informational materials” on copyright that “accurately describe and promote compliance with the laws of the United States relating to copyright” and
- The instructor is mandated to participation in the planning and conduct of the distance education program as transmitted. (Crews, 2002)
### Appendix C – Spring 2003 Web-Based Courses

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<td></td>
</tr>
<tr>
<td></td>
<td>NR NUR</td>
<td>WEB-BASED OPEN TO ALL</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>NR NUR</td>
<td>CAMPUSES CHECK NURSING</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>NR NUR</td>
<td>WEB PAGE</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**TOTAL COURSES OFFERED VIA WEB:** 103
**STAFF:** 32
**IDENTIFIED INSTRUCTORS:** 71

134
### Appendix D: Gassaway’s Comparison of Old and New Section 110(2) of U.S. Copyright Law

<table>
<thead>
<tr>
<th></th>
<th>U.S.Copyright Law (old) at § 110(2)</th>
<th>TEACH Act (new) § 110(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Instructional Broadcasting</td>
<td>Digital Network</td>
</tr>
<tr>
<td><strong>Eligibility</strong></td>
<td>Nonprofit educational institutions and government bodies</td>
<td>Accredited nonprofit educational institutions and government bodies</td>
</tr>
<tr>
<td><strong>Activity</strong></td>
<td>Transmissions for instruction</td>
<td>Transmissions including over digital networks</td>
</tr>
<tr>
<td><strong>Works covered – performances</strong></td>
<td>Non-dramatic literary and musical works</td>
<td>Same PLUS reasonable and limited portions of other works – except works produced or marketed primarily for display as part of mediated instructional activity via a digital network</td>
</tr>
<tr>
<td><strong>Works covered – display</strong></td>
<td>Any work</td>
<td>Any work in an amount comparable to that typically displayed in a live classroom</td>
</tr>
<tr>
<td><strong>Limitations</strong></td>
<td>Systematic instruction, directly related and of material assistance to teaching content</td>
<td>1. At direction of or under actual supervision of instructor 2. Integral part of class session 3. Systematic mediated instructional activity</td>
</tr>
<tr>
<td><strong>Copy restrictions</strong></td>
<td>For audiovisual copy, must have been lawfully made</td>
<td>For all works, copy must have been lawfully made</td>
</tr>
<tr>
<td><strong>Where</strong></td>
<td>In a classroom or other place normally devoted to instruction, or anywhere for disabled recipients or those with other special circumstances that prevents attendance in a classroom</td>
<td>Anywhere but with technological conditions met</td>
</tr>
<tr>
<td><strong>Who</strong></td>
<td>Students, teachers or government employees as part of official duties or employment</td>
<td>Solely for students officially enrolled in course or officers or government employees as part of official duties or employment</td>
</tr>
</tbody>
</table>

*Laura Gasaway, [http://www.unc.edu/~unclng/TEACH.htm](http://www.unc.edu/~unclng/TEACH.htm)*
Appendix E: Coding Schema Attributes and Definitions

**Deterrence** is defined as the concept that people will engage in criminal activities if they have no fear of apprehension and punishment. Further, deterrence theory requires 1) the capability to inflict unacceptable cost; 2) a communicated threat of deterrence; 3) threats must come from a credible source; and 4) individuals can weigh pros and cons before making the decision to commit a deviant act (Sagan, 2000; Merton, 1957).

**Copyright and fair use training** is defined as formal instruction in policies and guidelines that apply to using copyrighted materials. This instruction may be provided as a component of some other curriculum or as stand-alone subject matter.

**Web design** is defined as the use of computer technology to produce text, graphics or other multimedia, for display on the World Wide Web.

<table>
<thead>
<tr>
<th>Code</th>
<th>Coding Schema Attribute</th>
<th>Definition: The degree to which...</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>D0</strong></td>
<td><em>Deterrence Characteristics</em></td>
<td></td>
</tr>
<tr>
<td>D1</td>
<td>Punishment</td>
<td>A penalty may be inflicted on an offender through judicial procedure.</td>
</tr>
<tr>
<td>D2</td>
<td>Fine/fee</td>
<td>A sum may be imposed as punishment for an offense; a forfeiture or penalty may be paid to an injured party in a civil action.</td>
</tr>
<tr>
<td>D3</td>
<td>Getting caught</td>
<td>Infringement is discovered unexpectedly. This implies that the faculty member is aware that an infringement was originally committed.</td>
</tr>
<tr>
<td>D4</td>
<td>Embarrassment</td>
<td>One experiences a state of self-conscious distress. This presupposes some initial self-confidence that receives a sudden check, producing shyness, shame or a feeling of inferiority.</td>
</tr>
<tr>
<td>D5</td>
<td>Example for students</td>
<td>One serves as a pattern to be imitated or not to be imitated by students through the use and display of online course materials. This implies a degree of professionalism.</td>
</tr>
<tr>
<td>D6</td>
<td>Loss of job/status</td>
<td>Privation results from loss or separation from one’s relative rank in a hierarchy of prestige, a specific duty, role, or function as a faculty member; also, a failure to gain, win, or obtain a relative rank in a hierarchy of prestige, duty, role or function.</td>
</tr>
<tr>
<td>D7</td>
<td>Choice/decision</td>
<td>The opportunity or privilege of choosing is freely made given the determination arrived at after consideration of all possible choices.</td>
</tr>
<tr>
<td>D8</td>
<td>Corrective feedback</td>
<td>Evaluative or corrective information is transmitted to the faculty member about an infringing action, event or process.</td>
</tr>
<tr>
<td>Code</td>
<td>Coding Schema Attribute</td>
<td>Definition: The degree to which...</td>
</tr>
<tr>
<td>------</td>
<td>------------------------</td>
<td>-----------------------------------</td>
</tr>
<tr>
<td>D9</td>
<td>Routine activities decision-making</td>
<td>Decision behavior is based on a motivated offender, a suitable target that offers some form of easy access and reward, and an absence of authority. This promotes a “no one is watching” mentality.</td>
</tr>
<tr>
<td>D10</td>
<td>Differential association decision-making</td>
<td>Decision behavior is learned through association with others, such as techniques for committing a crime. This promotes an “everyone does it and gets away with it” mentality.</td>
</tr>
<tr>
<td>D11</td>
<td>Prospect decision-making</td>
<td>Decisions tend to overweight small probabilities and underweight moderate and high probabilities. This promotes a “means justifies the ends” mentality.</td>
</tr>
</tbody>
</table>

**C0 Copyright and Fair Use Training Characteristics**

<table>
<thead>
<tr>
<th>Code</th>
<th>Training Characteristics</th>
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</thead>
<tbody>
<tr>
<td>C1</td>
<td>University workshop</td>
</tr>
<tr>
<td>C2</td>
<td>Authority (absence or presence)</td>
</tr>
<tr>
<td>C3</td>
<td>University policy</td>
</tr>
<tr>
<td>C4</td>
<td>Usefulness</td>
</tr>
<tr>
<td>C5</td>
<td>Library resource</td>
</tr>
<tr>
<td>C6</td>
<td>University online resource regarding copyright and fair use</td>
</tr>
</tbody>
</table>

Copyright and fair use training is provided by the university in a computer laboratory or classroom on-site as a service to faculty. The workshop may include training in general web design, or training in the use of a web authoring tool such as Blackboard or WebCT, in which copyright and fair use instruction by a university copyright expert is provided as a component of the curriculum.

Faculty members have knowledge of an individual cited or appealed to as a copyright expert, a source who has power to influence thought, opinion or behavior on online course materials regarding copyright guidelines.

Faculty members have knowledge of a high-level overall plan embracing the general goals and acceptable procedures regarding copyright and fair use.

Faculty members perceive that copyright and fair use guidelines are generally valuable or productive.

The on-site library holds information regarding copyright and fair use guidelines of the university and makes them available for faculty use.

The world wide web holds information regarding copyright and fair use guidelines provided by the specific university under study for faculty use.
<table>
<thead>
<tr>
<th>Code</th>
<th>Coding Schema Attribute</th>
<th>Definition: The degree to which...</th>
</tr>
</thead>
<tbody>
<tr>
<td>C7</td>
<td>Generic online resource regarding copyright and fair use</td>
<td>The world wide web holds information regarding copyright and fair use guidelines for faculty use that are provided by sources other than the university under study. This implies that information is current and accurate on the web page accessed by the faculty member.</td>
</tr>
<tr>
<td></td>
<td>Support</td>
<td>Services provided by the university under study are available to refer faculty members to a university authority on copyright and fair use. This includes service provided via telephone, electronic mail, in person or U.S. postal service.</td>
</tr>
<tr>
<td>C9</td>
<td>Convenience</td>
<td>Suitability for performing an action or fulfilling a request for copyright and fair use guidance by a university authority at appropriate time and place or method.</td>
</tr>
</tbody>
</table>

**W0  Web Design Characteristics**

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
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<tbody>
<tr>
<td>W1</td>
<td>Download a file</td>
</tr>
<tr>
<td>W2</td>
<td>Copy-and-paste /Clipboard a file</td>
</tr>
<tr>
<td>W3</td>
<td>Link a file</td>
</tr>
<tr>
<td>W4</td>
<td>Fee for use</td>
</tr>
<tr>
<td>Code</td>
<td>Coding Schema Attribute</td>
</tr>
<tr>
<td>------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>W5</td>
<td>Technical support</td>
</tr>
<tr>
<td>W6</td>
<td>Authoring tool</td>
</tr>
<tr>
<td>W7</td>
<td>Communication media</td>
</tr>
</tbody>
</table>

**R0** Other Characteristics (added after pilot test)

R1

R2

R3

R4

R5

R6

R7

R8

R9

R10
## Appendix F: Survey Scoring/Online Resources Survey Instrument

### Survey Scoring

1. **Book**

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>10%</td>
</tr>
<tr>
<td>3</td>
<td>1 chapter</td>
</tr>
<tr>
<td>2</td>
<td>50%</td>
</tr>
<tr>
<td>1</td>
<td>I don’t know</td>
</tr>
<tr>
<td>0</td>
<td>Unlimited amount or No response</td>
</tr>
</tbody>
</table>

Journal article

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>10%</td>
</tr>
<tr>
<td>2</td>
<td>50%</td>
</tr>
<tr>
<td>1</td>
<td>Whole article</td>
</tr>
<tr>
<td>0</td>
<td>I don’t know or No response</td>
</tr>
</tbody>
</table>

Poem

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>10%</td>
</tr>
<tr>
<td>2</td>
<td>50%</td>
</tr>
<tr>
<td>1</td>
<td>Whole poem</td>
</tr>
<tr>
<td>0</td>
<td>I don’t know or No response</td>
</tr>
</tbody>
</table>

Play

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>10%</td>
</tr>
<tr>
<td>3</td>
<td>50%</td>
</tr>
<tr>
<td>2</td>
<td>1 act</td>
</tr>
<tr>
<td>1</td>
<td>Unlimited amount</td>
</tr>
<tr>
<td>0</td>
<td>I don’t know or No response</td>
</tr>
</tbody>
</table>

2. **Copy and paste text without a license**

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unchecked</td>
</tr>
<tr>
<td>0</td>
<td>Checked</td>
</tr>
<tr>
<td>5</td>
<td>1 semester</td>
</tr>
<tr>
<td>4</td>
<td>2 semesters</td>
</tr>
<tr>
<td>3</td>
<td>3 semesters</td>
</tr>
<tr>
<td>2</td>
<td>4 semesters</td>
</tr>
<tr>
<td>0</td>
<td>Indefinitely</td>
</tr>
<tr>
<td>0</td>
<td>I don’t know or No response</td>
</tr>
</tbody>
</table>

2. continued **Hyperlink to lead students to a page containing others’ text**

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>Unchecked</td>
</tr>
<tr>
<td>1</td>
<td>Checked</td>
</tr>
<tr>
<td>5</td>
<td>1 semester</td>
</tr>
<tr>
<td>4</td>
<td>2 semesters</td>
</tr>
<tr>
<td>3</td>
<td>3 semesters</td>
</tr>
<tr>
<td>2</td>
<td>4 semesters</td>
</tr>
<tr>
<td>0</td>
<td>Indefinitely</td>
</tr>
<tr>
<td>0</td>
<td>I don’t know or No response</td>
</tr>
</tbody>
</table>

Purchase/license for text

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Checked</td>
</tr>
<tr>
<td>0</td>
<td>Unchecked</td>
</tr>
</tbody>
</table>

Limit access to text by password

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Checked</td>
</tr>
<tr>
<td>0</td>
<td>Unchecked</td>
</tr>
</tbody>
</table>

Limit access to text by reserve

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<tr>
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<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Checked</td>
</tr>
<tr>
<td>0</td>
<td>Unchecked</td>
</tr>
</tbody>
</table>

Include copyright notice for text

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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</tr>
<tr>
<td>0</td>
<td>Unchecked</td>
</tr>
</tbody>
</table>

Include citations for text

<table>
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<tr>
<th># Points</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Checked</td>
</tr>
<tr>
<td>0</td>
<td>Unchecked</td>
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</tbody>
</table>

3. **Students not assigned to make web pages**

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Checked</td>
</tr>
<tr>
<td>0</td>
<td>Unchecked</td>
</tr>
</tbody>
</table>

No text from others’ web pages

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Checked</td>
</tr>
<tr>
<td>0</td>
<td>Unchecked</td>
</tr>
</tbody>
</table>
Remove others’ text at end of semester

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Checked</td>
</tr>
<tr>
<td>0</td>
<td>Unchecked</td>
</tr>
</tbody>
</table>

May use others’ text indefinitely

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unchecked</td>
</tr>
<tr>
<td>0</td>
<td>Checked</td>
</tr>
</tbody>
</table>

4. Some of my web text written by others

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>No</td>
</tr>
<tr>
<td>0</td>
<td>Yes</td>
</tr>
<tr>
<td>0</td>
<td>I use NO text at all</td>
</tr>
</tbody>
</table>

5. Copy and paste image without a license

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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</tr>
<tr>
<td>0</td>
<td>Checked</td>
</tr>
<tr>
<td>5</td>
<td>1 semester</td>
</tr>
<tr>
<td>4</td>
<td>2 semesters</td>
</tr>
<tr>
<td>3</td>
<td>3 semesters</td>
</tr>
<tr>
<td>2</td>
<td>4 semesters</td>
</tr>
<tr>
<td>0</td>
<td>Indefinitely</td>
</tr>
<tr>
<td>0</td>
<td>I don’t know or No response</td>
</tr>
</tbody>
</table>

Hyperlink to lead students to a page containing others’ image

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
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<tr>
<td>1</td>
<td>Checked</td>
</tr>
<tr>
<td>5</td>
<td>1 semester</td>
</tr>
<tr>
<td>4</td>
<td>2 semesters</td>
</tr>
<tr>
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<td>3 semesters</td>
</tr>
<tr>
<td>2</td>
<td>4 semesters</td>
</tr>
<tr>
<td>0</td>
<td>Indefinitely</td>
</tr>
<tr>
<td>0</td>
<td>I don’t know or No response</td>
</tr>
</tbody>
</table>

Use others’ image on my page through link

<table>
<thead>
<tr>
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<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>Unchecked</td>
</tr>
<tr>
<td>1</td>
<td>Checked</td>
</tr>
<tr>
<td>5</td>
<td>Indefinitely</td>
</tr>
<tr>
<td>4</td>
<td>4 semesters</td>
</tr>
<tr>
<td>3</td>
<td>3 semesters</td>
</tr>
<tr>
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<td>2 semesters</td>
</tr>
<tr>
<td>0</td>
<td>1 semester</td>
</tr>
<tr>
<td>0</td>
<td>I don’t know or No response</td>
</tr>
</tbody>
</table>

Purchase/license image

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Checked</td>
</tr>
<tr>
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<td>Unchecked</td>
</tr>
</tbody>
</table>

Use “thumbnail” of image

<table>
<thead>
<tr>
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<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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<tr>
<td>0</td>
<td>Unchecked</td>
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</tbody>
</table>

Limit access to image by password

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Checked</td>
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<tr>
<td>0</td>
<td>Unchecked</td>
</tr>
</tbody>
</table>

Include copyright notice for image

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Checked</td>
</tr>
<tr>
<td>0</td>
<td>Unchecked</td>
</tr>
</tbody>
</table>

Include citations for image

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Checked</td>
</tr>
<tr>
<td>0</td>
<td>Unchecked</td>
</tr>
</tbody>
</table>

6. Students not assigned to make web pages

No image from others’ web pages

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Checked</td>
</tr>
<tr>
<td>0</td>
<td>Unchecked</td>
</tr>
</tbody>
</table>

Remove others’ image at end of semester

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Checked</td>
</tr>
<tr>
<td>0</td>
<td>Unchecked</td>
</tr>
</tbody>
</table>

May use others’ image indefinitely

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unchecked</td>
</tr>
<tr>
<td>0</td>
<td>Checked</td>
</tr>
</tbody>
</table>

7. Some of my web images created by others

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>No</td>
</tr>
<tr>
<td>0</td>
<td>Yes</td>
</tr>
<tr>
<td>0</td>
<td>I use NO image at all</td>
</tr>
</tbody>
</table>

8. Copy and paste audio without a license

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unchecked</td>
</tr>
<tr>
<td>0</td>
<td>Checked</td>
</tr>
<tr>
<td>5</td>
<td>1 semester</td>
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<tr>
<td>4</td>
<td>2 semesters</td>
</tr>
<tr>
<td>3</td>
<td>3 semesters</td>
</tr>
<tr>
<td>2</td>
<td>4 semesters</td>
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<tr>
<td>0</td>
<td>Indefinitely</td>
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### 8. continued student

Amount of audio used per student

<table>
<thead>
<tr>
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<th>Response</th>
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<tbody>
<tr>
<td>3</td>
<td>10%</td>
</tr>
<tr>
<td>2</td>
<td>50%</td>
</tr>
<tr>
<td>1</td>
<td>100%</td>
</tr>
<tr>
<td>0</td>
<td>I don’t know or No response</td>
</tr>
</tbody>
</table>

Hyperlink to lead students to a page containing others’ audio

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>Unchecked</td>
</tr>
<tr>
<td>1</td>
<td>Checked</td>
</tr>
<tr>
<td>5</td>
<td>1 semester</td>
</tr>
<tr>
<td>4</td>
<td>2 semesters</td>
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<tr>
<td>2</td>
<td>4 semesters</td>
</tr>
<tr>
<td>0</td>
<td>Indefinitely</td>
</tr>
<tr>
<td>0</td>
<td>I don’t know or No response</td>
</tr>
</tbody>
</table>

### 9. Students not assigned to make web pages

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
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</thead>
<tbody>
<tr>
<td>1</td>
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<tr>
<td>0</td>
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</tbody>
</table>

No audio from others’ web pages

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
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<tbody>
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<td>1</td>
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</tr>
<tr>
<td>0</td>
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</table>

Remove others’ audio at end of semester

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Checked</td>
</tr>
</tbody>
</table>

### 10. Some of my web audio created by others

<table>
<thead>
<tr>
<th># Points</th>
<th>Response</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>No</td>
</tr>
<tr>
<td>0</td>
<td>Yes</td>
</tr>
<tr>
<td>0</td>
<td>I use NO audio at all</td>
</tr>
</tbody>
</table>

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**Highest possible score = 88 points**

Web pages of Online Survey follow
Online Resources Survey

This survey is being conducted by Phyllis Sweeney (Principal Investigator) and Dr. Ann E. Barron (Co-Investigator) at the University of South Florida. This is part of a doctoral dissertation.

General Information about the Research Study
The purpose of this research study is to determine the extent to which USF educators are aware of recent changes to Title II of the U.S. Copyright Code, how informed they are of using the course management system, and how well they are trained in improving how well they teach others with the course materials.

Plan of Study
You will be asked to complete the brief online survey shown on this page. Additionally, you may be asked to participate in a 30-minute online focus group following the survey. This is also part of this research study.

Payment for Participation
You will not be paid for your participation in this study.

Benefits of Being a Part of This Research Study
By taking part in this study, you may increase your awareness of your preparation of online course materials.

Risks of Being a Part of This Research Study
This study involves no more than minimal risk.

Confidentiality of Your Records
Your privacy and research records will be kept confidential. Any data that you provide will be password protected and will be stored on secure servers. The USF Institutional Review Board will monitor the research project and the USF Institutional Review Board will monitor the research project. If any data are lost or if your data are not kept confidential, we will not include any information that will make it possible to identify you. The records of this study will be kept at the University of South Florida. If you decide to participate, you are free to withdraw at any time without affecting your relationship with USF.

Questions and Contacts
If you have any questions about this research study, contact Phyllis Sweeney, psweeney@tempest.coedu.usf.edu or Dr. Ann E. Barron, jbarron@tempest.coedu.usf.edu.

Your Consent
You have the option to participate or not. If you choose not to participate, your decision will not affect your relationship with USF. You are free to withdraw at any time. If you choose to participate, you are free to withdraw at any time without affecting your relationship with USF.

Institutional Approval of Study and Informed Consent
The research project and informed consent forms were reviewed and approved by the University of South Florida Institutional Review Board for the protection of human subjects. This approval is valid until the date provided below. The board may be contacted at (813) 974-4630, ext 210936.

Approval Date: 2012/01/01
Expiration Date: 2013/01/01

Please print a copy of this informed consent form, which is noted to keep.

I consent to participate in the study described above.
I do not consent to participate in the study described above.

Start the Survey
Online Resources Survey

Thank you for interest in this research project.

For more information about the survey or its results, please contact Phyllis Sweeney at psweeney@tempest.coedu.usf.edu or 813-974-9893.

Online Resources Survey

You have selected the following choices:

1. Gender
2. Department
3. Tenure
4. Number of years taught at this university
5. Rank
6. Number of sections administered/taught
7. Formal training in creating web-based content
8. Formal training in this university's copyright/fair use policies
9. Knowledge of this university's policies on copyright/fair use

Have you answered every question in Section 1 – Demographics?

If NO, Return to Section 1 If YES, Go to Section 2
Online Resources Survey
Section 1 of 2 – Demographics

You may complete all, some or none of this demographic section of the survey. Please do click the SEND MY ANSWERS button below even if you do not complete any of this section.

Gender
- Male
- Female

Are you tenured?
- Yes
- No

How many years have you taught at this institution?
- Less than 1
- 1-5
- 6-9
- 10+

What is your academic rank?
- Professor
- Associate Professor
- Assistant Professor
- Instructor
- Adjunct/Contract
- Librarian
- Graduate Teaching Assistant

With which college or department are you most closely associated?
- Architecture
- Arts & Sciences
- Business
- Computer Science
- Education
- Engineering
- Fine/Performing Arts
- Law
- Library
- Marine Science
- Medicine/Nursing/Public Health
- Not associated with any department

How many sections or classes that you currently administer/teach use any web page, Blackboard or WebCT course materials? Examples: course syllabus, online readings, visual samples, etc.
- 0
- 1-3
- 4-6
- 7+

(if you select 0, please STOP – do not submit this survey)

Have you had any type of formal training in creating web-based course content?
- Yes
- No

Have you had formal training in this university's copyright/fair use policies (i.e., part of a university sponsored workshop, meeting with this university's copyright specialist, etc.)?
- Yes
- No

On a scale of 1 to 5, with 1 being Uninformed and 5 being Expert, please rate your knowledge of this university's copyright/fair use policies.
- 1
- 2
- 3
- 4
- 5
Online Resources Survey
Section 2 – Text, Images and Audio

This section of the Survey asks you to learn how you handle materials you make available to students online.
Web pages, Blackboard in WebCT, and digital library reserves are some of the web-based, online places where you post course material. Please answer the questions according to the best of your knowledge and experience.

Course content can consist of:
Text (printed matter that you write, or content written by others from books, journal articles, powerpoints, or from other online resources such asati, course calendars, etc.),
Images (drawings, charts, figures, tables, etc.), and
Audio (tapes, compact discs, CD-ROMs, and other sound files).

A. Text

1. In general, how much copyrighted text written by someone else are you permitted to use for your own web based course content?
   - 5%  - 50%  - whole chapter  - Unrestricted amount  - I don’t know
   - 5%  - 50%  - whole article  - I don’t know
   - 5%  - 50%  - whole page  - I don’t know
   - 5%  - 50%  - whole course  - I don’t know
   - 5%  - 50%  - whole term  - I don’t know

2. Consider a source for other that you would like your students to read in your course syllabus. Should you post it online only, or should you post it online along with a license?
   - Yes  - No  - I use both online and a license

3. Do you limit access to text by posting it on your own web page?
   - Yes  - No

4. Do you allow your students to view, print, or make copies of the text?
   - Yes  - No

5. Do you require your students to purchase a license?
   - Yes  - No

6. Do you require your students to purchase a password?
   - Yes  - No

7. Are there any other restrictions or limitations on the use of the text?
   - Yes  - No

B. Images

6. How do you ensure that you can use an image created by someone else in your own course materials?
   - I don’t know

C. Audio

6. If audio created by someone else is in your web page, do you ensure that you have rights to use the audio?
   - I don’t know

7. If you post an audio file, do you ensure that you have rights to use the audio?
   - I don’t know

8. Do you require your students to purchase a license for the audio?
   - Yes  - No

9. Do you require your students to purchase a password for the audio?
   - Yes  - No

D. General

11. Do you believe that all of your web based course materials comply with university policy and copyright law?
   - Yes  - No

12. If you checked “No” or “I don’t know” in Question 11, how did you make your decision?
   - I don’t know

Comments about this survey

END OF SURVEY

Thank you for participating in this survey. Please contact Rhodes College, Information Technology, or SRO for information about results.
Online Resources Survey

Have you answered every question in Section 2 – Text, Images and Audio?

If NO, Return to Section 2

If YES, thank you for participating in my research.

If you are interested, here is a link to the University of South Florida’s copyright and fair use policies: http://lis2.admin.usf.edu/usfgc/gc_pp/gnadm/gc105.htm, Policy Number 0-105.

For more information about this survey or its results, please contact Phyllis Sweeney at psweeney@tempest.coedu.usf.edu or 813-974-9893.

UNIVERSITY OF SOUTH FLORIDA
Policies and Procedures Manual

<table>
<thead>
<tr>
<th>Subject of Policy Statement</th>
<th>Effective Date</th>
<th>Policy Number</th>
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</thead>
<tbody>
<tr>
<td>University Copyright Policy</td>
<td>4/20/00</td>
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I. WHAT IS COPYRIGHT?

Copyright is a form of protection provided by the laws of the United States (Title 17, U.S.C.) to the authors of "original works of authorship," including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available for 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.

It is illegal for anyone to violate any of the rights provided by the copyright law to the owner of copyright. These rights, however, are not unlimited in scope. 17 U.S.C. §107-110 contain limitations on these rights. In some cases, these limitations are specified exemptions from copyright liability. One major limitation is the doctrine of "fair use," which is given a statutory basis in section 107 of the 1976 Copyright Act. In other instances, the limitations take the form of a "compulsory license" under which certain limited uses of copyrighted works are permitted upon payment of specified royalties and compliance with statutory conditions. For further information about the limitations of any of these rights, consult the Copyright Office of the Library of Congress website at loc.gov/copyright.

II. WHAT WORKS ARE PROTECTED BY COPYRIGHT?

Copyright protects "original works of authorship" that are fixed in a tangible form of expression. The fixation need not be directly perceptible so long as it may be communicated with the aid of a machine or device. Copyrightable works include the following categories:

- Literary works
- Musical works, including any accompanying words
- Dramatic works, including any accompanying music
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Motion pictures and other audiovisual works
- Sound recordings
- Architectural works

These categories should be viewed broadly. For example, computer programs and most "compilations" may be registered as "literary works"; maps and architectural plans may be registered as "pictorial, graphic, and sculptural works."
III. WHAT IS NOT PROTECTED BY COPYRIGHT?

Several categories of material are generally not eligible for federal copyright protection. These include among others:

- Works that have not been fixed in a tangible form of expression, (for example, choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded);
- Titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or coloring; mere listings of ingredients or contents;
- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration; and
- Works consisting entirely of information that is common property and containing no original authorship (for example, standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources).

Federal copyright law recognizes that authors, artists, and other creators of works must have the exclusive right to control the use of these works. However, copyright law also recognizes that certain uses of a copyrighted work may be permitted without the prior consent of the copyright holder. Such use is known as "fair use." Whether a particular use is "fair use" is determined on a case by case basis. In determining whether a use is permissible as "fair use," copyright law recognizes four factors to be considered. They are:

1) The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes. (A commercial use is presumptively an unfair use.)
2) The nature of the copyrighted work.
3) The amount and substantiality of the portion used in comparison to the copyrighted work as a whole.
4) The effect of the copying on the potential market for the copyrighted work or the value of the copyrighted work. If the copying of a work will result in a decrease in value of that work's market value, then generally it will not enjoy fair use.

As a general rule, University faculty and staff may lawfully make fair use of copyrighted materials by duplicating them for educational purposes.

The following guidelines will assist you in determining if your use of copyrighted materials is fair use. The outer limits of fair use may reach further than the limitations suggested by these guidelines. However, these guidelines if followed, should serve to minimize the risk of a potential lawsuit. The policy further provides that when material sought to be copied falls outside the scope of the guidelines, faculty and staff should secure permission to copy from the copyright owners. (A Standard Permission Request Form is attached)


IV. GUIDELINES FOR CLASSROOM COPYING

These guidelines may help you to determine what use of a copyrighted work will be considered permissible "fair use." Generally, if your use of a copyrighted work falls within these guidelines it may be considered "fair use."

1) Single Copying for Teachers.
   A) A single copy may be made of any of the following by or for a teacher at his individual request for his scholarly research or use in teaching or preparation to teach a class:
      a) a chapter from a book;
      ii) an article from a periodical or newspaper;
      iii) a short story, short essay or short poem, whether or not from a collective work;
      iv) a chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.

   B) Permissible Length.
      a) Poetry: A complete short poem or an excerpt thereof (i.e., a work of approximately 250 words.)
      b) Prose: a complete article, short story or essay (i.e., a work of approximately 2,500 words)
      an excerpt from any full length prose work (i.e., a 1,000 word excerpt from a larger work.)
      iii) Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.
2) Multiple Copies for Classroom Use.

A) Multiple copies are not to exceed more than one copy per pupil in a course and may be made by or for the teacher instructing the course, provided:

i) the inspiration and decision of the teacher to use the work and the moment of its use must be so close in time that it would be unreasonable to expect a timely reply to request for permission.

ii) the copying of the material is to be made for only one course in the school, and no more than one short poem, article, story, essay or two excerpts may be copied from the same author and not more than three excerpts from the same collective work or periodical volume. There shall not be more than nine instances of such multiple copying for one course during one class term. (These limitations do not apply to current news periodicals, newspapers or news sections of other periodicals.)

iii) Each reproduction of a copyrighted work includes a notice of copyright.

B) Prohibitions.

i) There shall be no copying of or from "consumable" materials including, but not limited to, workbooks, exercises, standardized tests, test booklets, answer sheets and like consumable materials.

ii) Multiple copying shall not be a substitute for the purchase of books, periodicals or publishers' reprints and shall not be repeated with respect to the same item by the same teacher from one class term but shall be the inspiration and decision of the individual teacher.

iii) No charge shall be made to the student beyond the actual cost of the photocopying.

iv) The copying shall not create, replace, or substitute for anthologies, compilations or collective works.

3) Music.

A) Permissible Uses (for academic purposes other than performances):

i) single or multiple copies of excerpts of musical works may be made, provided the excerpts do not comprise a performance unit (i.e., a section, movement or act) but it is not to comprise more than ten percent of the whole work or more than one copy per pupil;

ii) a single copy of an entire performable work (i.e., section, movement, aria, etc.) confirmed by the copyright proprietor to be out of print or unavailable except in a larger work may be made by or for a teacher solely for the purpose of his scholarly research or preparation to teach a class;

iii) purchased printed copies of a musical work may be edited or simplified by the teacher provided the fundamental character of the work is not distorted or lyrics altered or added.

iv) an individual teacher may make a single copy of recordings of performances by students for evaluation or rehearsal purposes and said copy may be retained by the institution or the teacher;

v) a single copy of a sound recording may be made from sound recordings of copyrighted music owned by an educational institution or teacher for the purpose of constructing oral exercises or examinations and may be retained by the institution or the teacher; and

vi) a teacher may make emergency copies to replace purchased copies of a musical work which are unavailable for an eminent performance but purchased replacement copies must be substituted after the performance.

B) There shall be no:

i) copying of or from materials intended to be "consumable" in the course of study or of teaching;

ii) copying for the purpose of performance, except as listed above;

iii) copying without inclusion of the copyright notice;

iv) copying of musical works in lieu of purchase, except as listed above; or

v) copying to create, replace or substitute for anthologies, compilations or collective works.
4) Audiovisual Aids, Literary and Musical Works.

A teacher may perform, display, or otherwise use motion pictures and other audiovisual works, or recorded copies thereof, and literary or musical works in the classroom, provided:

A) the use, performance or display is in the normal and regular course of his teaching activities;
B) all recorded copies of audiovisual works are lawfully made;
C) no transmission is made beyond the place where the copy is located (i.e. outside the building or general area of classroom);
D) the use is limited to students of the University;
E) the purpose is strictly educational in nature, not for the recreation and/or entertainment of the audience; and
F) the following restrictions are observed in the off-the-air recording and use of television and cable programs:

i) the program can be recorded only once by or at the request of an individual teacher, even if the program has been broadcast numerous times, and must include the copyright notice;
ii) the program must be used within ten school days of its recording and can be used only twice during that period once as a teaching aid and once for reinforcement;
iii) the copy must be erased or destroyed at the end of forty-five school days after recording (during the last thirty-five days, the program can be used only by the teacher for evaluation purposes); and
iv) recorded programs may not be physically or electronically combined or merged to create teaching anthologies or compilations, and may not be altered from their original content.

5) Library.

A) Under the following circumstances and conditions, it is not a copyright infringement for a library through their employees acting within the scope of their employment to reproduce:

i) no more than one copy or phonorecord of work or to distribute such copy or phonorecord, except as stated in subsections (b) and (c), but only if:
a) the reproduction and distribution does not result in any direct or indirect commercial advantage;
b) collections of the library are open to the public OR to researchers engaged in research in a specialized field, whether they are affiliated with the library or not, AND
c) the reproduction and distribution of the work contains a notice of copyright that appears on the copy that is reproduced, or in the event there is no such notice of copyright appearing on the copyrighted work, a legend stating on the copy that the work may be protected by copyright.

B) Reproduction and Distribution of Unpublished Work

If the sole purpose of the duplication of Unpublished Work is for preservation, and security or for deposit for research use in another library of the type described in A) i) b) above, then the library or archives can reproduce or distribute three (3) copies or phonorecords if

i) the copy or phonorecord being reproduced is currently in the collection of the library, AND,

a) any such copy or phonorecord that is being distributed in digital format is not distributed in digital format and is not made available to the public in that format outside the premises of the library or archives.
C) Reproduction and Distribution of Published Work

If the sole purpose of duplication of Published Work is to replace a copy or phonorecord that is: a) damaged; b) deteriorating; c) lost; d) stolen, or e) if the existing format in which the work is stored has become obsolete, then the library or archives can re-produce three (3) copies or phonorecords if, (i) the library made a reasonable effort to determine that an unusual replacement cannot be obtained at a fair price, AND (ii) any copy or phonorecord that is not made available to the public in that format outside the premises of that library in lawful possession of such copy.

D) Rights of Reproduction and Distribution of a 'Small Part' of Copyrighted Work

When requested, a library could reproduce and distribute a copy of no more than one article (from the collection of a library from which the request is made or from that of another library) to a copyrighted collection or periodical, issue, or to a copy or phonorecord of a small part of any other copyrighted work if, (i) the copy or phonorecord becomes the property of the requestor and the library has no notice that the copy or phonorecord would be used for purposes other than private study, scholarship, or research, AND (ii) the library displays prominently, at the place where orders are accepted, and includes on its order form, a warning of the copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

E) Rights of Reproduction and Distribution of the Entire Work of Copyrighted Work

When requested, a library could reproduce and distribute an entire work or a substantial part of it, (made from the collection of a library from which the request is made or from that of another library) if, (i) the copy or phonorecord becomes the property of the user, and the library has no notice that the copy or phonorecord would be used for purposes other than private study, scholarship, or research, AND (ii) the library displays prominently, at the place where orders for copying are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by Regulation.

F) Reproduction of a Copyrighted Work During the Last 20 Years of Its Copyright Duration

For the purpose of preservation, scholarship, or research, a library or archives including a nonprofit educational institution may reproduce, distribute, display or perform in facsimile or digital form, a copy or phonorecord of such work or portions thereof, but only if the library (or nonprofit educational institution) has first determined after reasonable investigation that:

i) the work is not subject to normal commercial exploitation;

ii) a copy or phonorecord of the work cannot be obtained at a reasonable price, or

iii) no notice has been received by the copyright owner or its agent stating that either of the conditions stated in D and E above applies.

The exemption provided in F above, does not apply to any subsequent uses by users other than a library, archives or a nonprofit educational institution.

G) The rights of reproduction and distribution stated herein, do not apply to a musical work, a pictorial, graphic, or sculptural work, motion picture, or other audio visual work (unless the audiovisual work deals with news) except in conformance with guidelines listed in IV(1) through IV(4).

No such limitation shall apply related to musical work, pictorial, graphic work, sculptural work, motion picture or other audio visual work if the reproduction and/or distribution is in accordance with paragraphs B) and C) above.

No limitation shall apply as to pictorial or graphic works that are part of an article. They may be reproduced along with the article in which they are treated as text.

H) Interlibrary Loan Restrictions on Photoduplication

i) Requests for photocopies.

a) A copyright compliance statement must be signed before photocopies can be obtained.

b) Within a calendar year, the library may request only a limited number of photocopies from any one particular work.

c) When more than six (6) requests for such photocopies are made in any one calendar year, the permission of the publisher should be sought and/or royalty
6) Video Media

Although the educational purpose of the University's limited copying of copyrighted printed works usually will be well within fair use, the nature of video media (films, videotapes, slides and transparencies) suggests a narrower application of fair use. Unlike a printed text that is designed primarily for private individual use, a film videotape, slide or transparency is meant to be viewed by larger groups with repeated performance expected.

Guidelines for use of copyrighted films, videotapes, slides, transparencies, CD ROMs, and multimedia may be considered 'fair use' under the following:

A) Film and videotapes (or video discs)
   i) Teacher's Single Copy provided that:
      a) only a small part of the work is duplicated; and
      b) the use of the duplication is intended for legitimate research, student evaluation, classroom teaching or preparation for teaching.
   ii) Multiple copies are prohibited.
   iii) The University, as a purchaser of a copyrighted film or videotape may copy the entire film/videotape up to three (3) copies solely for the purposes of replacement of the item:
      a) provided the need for replacement is caused by damage, deterioration, loss, theft, or if the format has become obsolete; and
      b) after reasonable effort, an unused replacement cannot be obtained at a fair price.

B) Other formats:
   i) Illustrations, Photographs
      A photograph or illustration may be used in its entirety. No more than five images by one artist or photographer. No more than 10% or 15 images, whichever is less, from any single published work.
   ii) Numerical Data Sets
      Up to 10% or 2500 fields or cell entries, whichever is less, from a database or data table. A field entry is a specific item of information in a record of a database file. A cell entry is the intersection where a row and a column meet on a spreadsheet.

7) Internet Technologies

A) The general rule that copyright law protects all works "fixed in any medium" also applies to documents on the Internet and the World Wide Web. If you wish to reproduce Internet works, you must follow copyright law, be within fair use, and follow the guidelines above in the same manner as if the document were printed on paper. If you wish to make multiple copies of an Internet work or otherwise wish to use the work in a manner which falls outside the fair use exceptions outlined in these guidelines, you must make a good faith effort to contact the author of the Internet work and to obtain reproduction permission from that individual. The electronic mail address of the author of an Internet work is often found at the conclusion of the work.

B) The information technology resources of the University of South Florida are a vital component of the academic environment of the University. It is the responsibility of all University students, faculty and staff to use these resources in a responsible, ethical and lawful manner. Any member of the University Community who abuses these resources may have engaged in unacceptable conduct. This may include the circumvention of technological measures that bypass copyright management information such as title, author, copyright owner, etc.
V. HOW LONG ARE COPYRIGHTED WORKS PROTECTED?

A work is copyrighted when the work is fixed in any medium, regardless of whether the work is formally published in a book or journal. A copyright notice (i.e., Copyright, John Smith, 1995) is no longer required for a work to be copyrighted. Therefore, even unpublished works may be copyrighted, so long as they are “fixed in any medium,” including something as simple as printing the work once on plain paper. However, a copyright notice still should be included on any work in order to assure that others are given notice of the copyright holder’s rights.

1) Generally, works published before January 1, 1978, that do not bear a copyright notice (C or Copyright, name of the copyright owner, year of first publication) and that have not been registered with the United States Office of Copyright within five years of publication may be reproduced.

2) Works Created On or After January 1, 1978:

   A) 

      i) A copyright in works created by an individual for that individual, endure for the life of the author plus seventy (70) years after the author’s death.

      ii) Copyright in works created by two or more individuals who did not work for hire, the copyright endures for a term consisting of the life of the last author plus seventy (70) years after the last surviving author’s death.

   B) Copyrights in works “made for hire,” that is, works created by an individual by and on the request of, an employer, endure for either one hundred and twenty (120) years from the year of its creation of the work or ninety-five (95) years after the first publication of the work whichever expires earlier.

   C) Note that even works for which a copyright appears to have expired may enjoy renewed copyright protection. If such evidence exists, reproduction of the work must conform with section “II. COPYRIGHTED WORKS,” below.

3) Works Created But Not Published or Copyrighted Before January 1, 1978:

   Copyright in works created before January 1, 1978, but not published or copyrighted before, subsists from January 1, 1978, and endures for a term as stated in 2)(a)(i) and ii above. In no event shall the duration of the copyright expire before December 31, 2002. If the work is published on or before December 31, 2002, the term of copyright shall not expire before December 31, 2047 or life of the author plus 70 years, whichever is later.

4) U.S. government documents: Most U.S. government publications may be photocopied without restrictions except to the extent that they contain copyrighted material from other sources. Certain works prepared for the U.S. government by outside authors may be protected by separate copyright. If a copyright notice cannot be found, it is reasonable to assume that these works can be photocopied without restriction.

5) State government documents: Unlike most U.S. government publications, state government works may be protected by copyright. If a copyright notice is specifically set out in a state government document, the work may be photocopied or reproduced only according to the guidelines set out in this policy. Note that if a copyright notice is not found, copyright protection may still be afforded to the work, and you may wish to contact the state agency responsible for the document.

If you have any questions or would like advice on specific aspects of copyright law as it relates to your area of responsibility, please contact:

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4202 East Fowler Avenue, ADM 250
Tampa, FL 33620-6250
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About the Author

Phyllis C. Sweeney received a Bachelor’s Degree in Liberal Studies from the University of Delaware in 1980, and a M.A. in Library and Information Science from the University of South Florida in 1998. She began teaching computer applications at St. Petersburg College in 1989, and continued there throughout her Ph.D. program at the University of South Florida which she began in 2001.

While in the Ph.D. program, Ms. Sweeney developed several hybrid and completely online courses that she taught using WebCT, Blackboard or individual websites. For the University of South Florida’s College of Education, she taught Instructional Technology courses at both graduate and undergraduate levels; and for the School of Library and Information Science, she taught Instructional Graphics, Webpage Design and Internet Orientation. She coauthored a paper on copyright and fair use that was presented at a conference for the International Association of Computer Information Science where she also served as a peer reviewer and session chair.