



# ***The IALLT Journal***

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## **LEGAL ISSUES & LLT**



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### **WHY LEARN ABOUT COPYRIGHT?**

Copyright is a complex and evolving principle, yet one does not need to have a great understanding of the intricacies of copyright law to be able to successfully navigate our personal and professional lives, which begs the question: Why learn about copyright?

As professional staff, educators and students engaged with the Language Center (LC), issues of copyright impact us on a daily basis; both as creators of original works as well as consumers of others' intellectual property. To further complicate the situation, copyright changes its form as we cross international borders, and is at times seemingly contradictory.

There are a multitude of reasons for exploring a deeper understanding of copyright law, not the least of which is the fact that the more you know, the easier it is to understand what may seem to be confusing or contradictory on the surface. Presented in this article are three reasons that resonate in particular to those who work in the LC: the potential financial impact to your unit's budget, minimizing (or at least understanding) the risks of infringement, and last, the responsibility we have as educational professionals to advocate for a fair and balanced law that is responsive to achieve the main goal of (U.S.) copyright law "...To promote the Progress of Science and useful Arts."<sup>1</sup>

Many LCs deal with limited budgets, even large centers have limits to their financial resources, as well as the charge to operate in a fiscally responsible manner. Thus, the financial impact of not understanding your rights as a consumer is perhaps the most effective argument of those listed in this article. Examples of situations that arise in the professional context are:

*Being charged to show a movie in the classroom (or if fees are based on number enrolled in the class)* United States copyright law includes the face-to-face teaching exemption, which states that in the context of a non-profit educational institution, you can play a video (protected work) in face-to-face teaching.<sup>2</sup> Although this example is not common, it exists more frequently with international vendors who do not understand how U.S. laws work. More frequently we see vendors trying to charge for the use of a video clip. In that case it would be worth running your use through a fair use evaluation to see if you can make a strong case without a purchase.

*Being charged the "institutional" price for a DVD that is for sale for less money to the general public* At times you will find a DVD is available at Amazon for \$20, but the official movie website lists

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<sup>1</sup> United States Constitution, Article I, Section 8

<sup>2</sup> (www.copyright.gov), U. C. (n.d.). Copyright Law of the United States of America. Retrieved January 23, 2017, from <https://www.copyright.gov/title17/92chap1.html#110> § 110 . Limitations on exclusive rights: Exemption of certain performances and displays

the cost of the same title for \$200 or more. In this case it may be more a question of ethics than legalities. Small independent filmmakers really need the income to sustain their filmmaking, and more often than not you will get additional rights for the higher price, rights such as public performance or digital streaming. It is important to understand what you are getting for that higher price.

*Being charged for an item when rights ownership is tenuous or unknown* There are two recent examples of large media corporations charging for the use of certain works, when the ownership of rights to those works is in question. The first example is the very widely covered case of the song “Happy Birthday” where Warner Music had been charging royalties for years. The court ruled in the summer of 2015 that Warner Music did not have a valid claim to the song.<sup>3</sup> The second example is the case of a photographer bringing a lawsuit against Getty Images for selling public domain images. “Believe it or not, selling public domain images is not illegal. Generally, anyone can sell pretty much anything that they get for free”.<sup>4</sup>

*Restrictions through an author’s contract with a publisher.* There are numerous stories of faculty signing a standard contract with a publisher, only to discover later that they are either restricted in using their own work, or must purchase their rights back for certain uses. There are standard clauses that you can add as addenda to your contracts prior to signing to protect any future use you wish to make of your own work. See Michigan Author’s Addendum as one example.<sup>5</sup>

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<sup>3</sup> Ingram, M. (2015, September 23). The twisted tale behind the world’s most popular song. Retrieved January 15, 2017, from <http://fortune.com/2015/09/23/happy-birthday-copyright-2/>

<sup>4</sup> Schlackman, S. (2016, August 10). Carol Highsmith Sues Getty for \$1 Billion But Can She Win? Retrieved January 22, 2017, from <http://artlawjournal.com/1-billion-getty-lawsuit/>

<sup>5</sup> Author Addendum. (n.d.). Retrieved January 22, 2017, from <https://www.lib.umich.edu/copyright/author-addendum>

This brings us to the second reason to understand copyright law; to avoid (unintended) infringement. Apart from any financial considerations, as educational professionals we should be providing the example of how we want our colleagues and students to behave with regard to copyright. As our students move into the world, they will need to know about sound ways to use others' intellectual property. In addition, many of us are copyright holders as well as consumers. How would you like society to treat your intellectual property? Examples of situations you may experience regarding unintended infringement are:

*Uploading text/audio/video to your course management site* Materials in your course management system may be infringing depending on how much you use of what, if it is integrated into the curriculum or supplemental, where you are teaching, and where your students are. The increased use of streaming video is very popular with faculty and students alike, however uses considered legal in the United States may not be legal when you are teaching abroad. Once you cross international borders, you may negate legal licenses you have for use in your country and/or trigger other countries' laws, which creates an even more complex situation with regard to rights.

*Students publishing their work online* In the context of a course assignment, especially one that is on paper or behind password protection, students have a lot of leeway in using protected material. However, with more and more projects being digital, the ease of publishing online and the proliferation of e-portfolios in education can expose students to risk; the same work they produce for a closed classroom enters a new realm of legalities when published openly on the web.

*Consortia shared courses* Courses shared among institutions present another interesting situation with regard to providing class content; such as the Big 10 Academic Alliance course-share program.<sup>6</sup> If a portion of your class is sitting at another institution,

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<sup>6</sup> CourseShare - Introduction. (n.d.). Retrieved January 15, 2017, from <https://www.btaa.org/projects/shared-courses/courseshare/introduction>

are you infringing copyright or breaking license agreements by the manner in which you give access to a video?

*Copyright ownership of one's own work* In the case of your own work, who owns the copyright? Is it you? Are you sure...? A relatively recent debate in higher education revolves around intellectual property ownership of Massive Open Online Courses, commonly referred to as MOOCs. While a professor may own the intellectual content of a course that they create, once it becomes a MOOC, rights ownership may be quite different depending on licenses and contracts with their institution.<sup>7</sup>

A third and perhaps the most altruistic reason to obtain a comprehensive understanding of copyright law is advocacy. As educators it is our responsibility to use copyright effectively so that it continues to work towards its intended purpose, and to advocate for proper policy evolution as big media corporations and technological advances push against traditional understanding of ownership and rights. We need an educated and aware public/society to maintain the tension between rights holders and consumers. Examples of situations you may experience regarding the need for advocacy:

*The Digital Millennium Copyright Act (DMCA) anti-circumvention exception* The anti-circumvention rule says that any circumvention of technology used to protect the copyright of the item is not allowed. However this prevented faculty from using media in ways that are legitimate fair use; for example hacking a DVD to digitize a clip for class. While the end use may be fair, the act of circumventing the protection to obtain that clip was against the law as this act was originally written. Through successful lobbying on

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<sup>7</sup> Report, S. B. (2014, March 1). Professors Peeved to Learn They Don't Own What They Teach Online | TIME.com. Retrieved January 15, 2017, from <http://nation.time.com/2014/03/01/online-courses-moocs-ownership/>

the part of lawyers and academics, an exception was granted for educational uses.<sup>8</sup>

*Copyright outside the US* In consideration of copyright across borders, lack of harmonization in laws and standards leaves users navigating a confusing landscape, with little to no clarity regarding risk and potential liability for adhering to the standard instructional practice of their own country. Recently the European Commission has proposed changes to the outdated EU copyright framework. An advocacy group COMMUNIA is taking this opportunity to organize input to present to lawmakers in order to create an intellectual property environment that is easier for teachers to navigate.<sup>9</sup>

New content producers have entered the media market; original productions by entities such as Netflix and Amazon offer rich linguistic, cultural and educational content. However up until very recently, there was no legal mechanism to use this media for instruction or research. In late 2016, Netflix added an educational use license on a small number of documentaries. While we cannot say for certain if the new policy is a result of years of educational staff requesting that an educational policy be adopted, these companies would certainly not know of our desire to use their media had those requests not been put forth. There is not as of yet industry wide educational licensing for all of their media, yet this small step provides hope that there is awareness of educational

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<sup>8</sup> Victory for Users: Librarian of Congress Renews and Expands Protections for Fair Uses. (2015, October 28). Retrieved January 22, 2017, from <https://www.eff.org/deeplinks/2015/10/victory-users-librarian-congress-renews-and-expands-protections-fair-uses>

<sup>9</sup> Kalshoven, L. (2016, December 08). We need to get a better copyright (reform) for education. Retrieved January 19, 2017, from <https://medium.com/eu-copyright-reform/we-need-to-get-a-better-copyright-reform-for-education-c95b5547ff91#.uflcsqyoj>

uses (as well as a market) and therefore the possibility of the creation of a more inclusive educational license.<sup>10</sup>

The examples given in this article are just a few that illustrate the intersection of education with copyright law. These examples are given not to create anxiety or panic with regard to current practice, but rather to raise awareness of potential areas of infringement for further exploration if you are concerned about a particular usage. As each individual use may differ from teacher to teacher, and institution to institution, it is difficult to provide concrete answers to the questions that arise on a regular basis when encountering such situations. However, there are excellent resources available to you as a professional in the Language Center. An excellent place to begin further exploration on this topic is by looking to your own institution for guidance and policy on proper use of materials; places to focus on would be your library, and a copyright office or general counsel. The IALLT Language Handbook will soon be published with a chapter devoted to copyright, including considerations if operating outside the United States. I have also created a public Diigo web group<sup>11</sup> that is a curated list of resources for learning more about copyright, including online courses and tutorials, articles written about specific concepts, and cases that were or currently are in litigation and how that can impact how we use protected items in both our personal as well as professional lives.

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<sup>10</sup> With 13th, Netflix May Be Relaxing Its Streaming Policy a Little, Which is Good for Educators. (n.d.). Retrieved January 22, 2017, from <http://www.thefacultylounge.org/2016/12/netflix-may-be-relaxing-its-streaming-policy-a-little-which-is-great-for-educators.html>

<sup>11</sup> Copyright Resources for IALLT. (n.d.). Retrieved January 23, 2017, from <https://groups.diigo.com/group/copyright-resources-for-iallt>

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