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Comment

1. Nature of Distance Education

(a). We differentiate distance education from face-to-face education and general use of electronic communications in educational settings by including only those courses that are taught in locations other than on the campus. Although distance education being taught at locations other than on the main campus may be face-to-face, the majority of our offerings are taught through some form of electronic transmission. The electronic methodology and transport mechanisms include two way interactive synchronous video and audio (compressed satellite video), one way video and two way audio (ITFS and one way full motion satellite), Internet and Web based asynchronous instruction, and audio conferencing. None of the uses of these technologies are totally inclusive. Internet discussion groups may be used with synchronous two-way video, audio conferencing may supplement Web based instruction, and so forth.

(b). Degree programs in numerous disciplines are being provided in a distance education setting. This includes baccalaureate and graduate level programs including such diverse areas as Natural Resources, Environmental Sciences, Business, General Agriculture, Special Education, Master of Teachers Education, Master of Social Work, and Master of Manufacturing Engineering. The Oregon University System distance education program also includes many course offerings in areas of special need such as in Electrical Engineering, and Computer Science and non-credit Professional Development Units required for certification of teachers and other professionals. The distance education programs that are electronically delivered all have interaction built into the course design. This interaction typically includes Internet feedback between the instructor and the students for most of the instructional design, including interactive video programs. At this point in time, the majority of courses are still delivered via synchronous interactive video. However, the primary growth in development of new courses is now being made using asynchronous methodologies, primarily Web based courses and video taped based courses, with some instruction being made available on CD ROM. Copies of video tapes may be made for each student, or one set made for each remote receive site, depending upon the situation.

(c). The course materials are made available in electronic form to the enrolled students. Some of the video courses can be purchased by the students for their retention. Policies vary depending upon the desires of the professor who has created the courses.

(d). The development of the courses are funded by the individual institutions. Approximately one-half of the institutions have had grant funding which enabled them to begin their distance education programs. All of the programs are nonprofit. The students are usually charged the normal instructional fee, and have an additional technology related assessment. These programs are not intended to make a profit, but are intended to cover costs.

(e). These programs are accredited by the same agencies as are their counterpart on-campus programs.

(f). These programs are delivered to many communities in Oregon. Several are delivered to a national audience. The audience is both urban and rural, depending upon the program being delivered. For example, while the Engineering programs are delivered primarily to the Portland area, Liberal Arts, Teacher's Education, and Environmental Science and Master of Social Works programs are delivered to rural areas. Students must gain admittance through the normal institution requirements and processes.

(g). Different programs are offered to high school, college, graduate school, and adult education. Most programs are offered for credit and as a part of a degree program.

(h). Most of the programs are conversions of existing on-campus programs for off-campus delivery. A small number of the programs use preproduced materials (video tapes, CDs, music), however, the majority of the programs have materials developed specifically for their use.

(i). Most instructors receive training about how to develop courses for distance education, which includes information about copyright laws and responsibilities.

2. Role of Licensing

(a). Permission is obtained for materials that are used that are copyright protected. The primary way is by direct contact with the copyright owner.

(b) Fair use previsions are used where they apply. Public domain materials are used when they fit the instructional need.

(c). There have been difficulties in receiving permission from copyright holders when the materials are delivered over an interactive video system. This occurs even though it is a closed circuit system that is equivalent to a single classroom environment. This has caused certain materials to not be used, and the quality of the lesson to be diminished.

(d). Licensing could be simplified if it could be handled electronically and if the materials were easily identified with electronic addresses, and information relevant to obtaining rights to use the material.

(e) Copyright clearing houses for licensing or obtaining permission to use material could help facilitate making use easier. Common guidelines licensing procedures for copyright holders could help in this regard.

3. Use of Technology

(a). As previously noted, numerous technologies are used to deliver distance education programs. The specific technologies include a compressed two-way video and audio satellite system using a V-Tel codec; Picture-Tel and Intel codec video conferencing equipment for terrestrial based transmissions; Internet and Web based delivery using course management tools such as First Class, Blackboard, Asymetrics Librarian, QuestWriter, and others. Audio conferencing is also conducted using a Lucent audio bridge. Video tapes containing lessons are distributed and used in conjunction with other interactive technologies for student to instructor and student to student feedback. Most of these technologies are generally commercially available, however, some courseware management tools have been developed to meet unique applications.

(b). The Web based courses are password protected so only those taking the courses can receive the materials. Most of the interactive video courses are in a closed circuit and cannot be received other than at the designated (bridged) sites. Local control regarding reproduction is handled through policies developed with the course managers and site managers.

4. The Application of Copyright Law (comment provided by Danny Shapiro, Director, Copyright Office, Oregon State University, shapirod@ccmail.orst.edu)

The problem that Oregon State University faces in applying copyright law to the myriad of functions and missions is the same that many other institutions of higher learning face in trying to uphold Section110(2) of the Copyright Law of 1976. This law was written for an era of analog broadcast technology and mainframe computing. The words “personal computer”, “digital technology” or “distributed computing” are not used because they were not yet invented.

Section 110(2) considers the need of educators to be exempted from the exclusive rights of performance and display. In the digital environment, a “transmission” of a work in digital form also creates a temporary copy of at least a portion of the work at the receiving end just to make the work perceivable to users, thereby implication the exclusive right of distribution. But, in fact, it does exist, if only for a moment in time. Thus, any revision to the law must consider the fundamental nature of digital technology and their potential legal ramifications under copyright law as it is currently interpreted. The DMCA

does take into account the need for backup or preservation copies of data as formats evolve.

Current law limits the growth of scholarship. It is based upon "transmission" technologies. Unlike the "face-to-face" environment, these "transmission" technologies left educators little chance of restricting access to teaching materials solely to enrolled students. In some situations, materials were delivered via an open broadcast system to enrolled students and to others capable of receiving a particular frequency. Students and the general public alike might access copyrighted materials intended solely for student learning, potentially allowing widespread, unauthorized uses of these works. In many communities today, this remains the case as programs are "cablecast" to all subscribers to the cable system, not just enrolled students.

Under current law, Section 110 seems to provide more educationally beneficial uses of copyrighted works in the restricted face-to-face classroom setting than is allowed in unrestricted "distance education" environments. This limitation results in a narrower use of materials, and the exclusion of today's conduit of social discourse and literature. Generally, our students have a very sophisticated understanding of electronic media based upon current culture. Recently, owners of copyright works are turning to digital technology to carry on the discourse. However, under existing law, distance educators cannot easily join the digital revolution to more appropriately serve and further the education of their students. The Copyright Office is urged to allow the inclusion of audiovisual works in any revision of section 110(2).

The concerns of copyright owners in the digital environment is acknowledged. However, these new digital technologies increasingly allow targeted access and control, offering security afforded to copyright materials used in the "face-to-face" classroom with the benefits accorded to students learning from more distant locations.

The restrictions contained in Section 110(2) based upon physical space need to be lifted. The new digital technologies allow us to create a learning environment without relationship to any particular physical location. Revision of this law will not only bring benefits to those in higher education, but to all of those who endeavor to educate and better society.