

**Comments prepared by Merrily Stover, Ph.D.**

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1. Nature of Distance Education

- (a) How may distance education be defined? In what sense does it differ from traditional face-to-face education? To what extent does it utilize digital technologies? In what sense does it differ from the general use of electronic communications in educational settings?

**Distance education is defined as teaching of classes where students and instructor are separated by time and or space. It differs from traditional face-to-face education in that because students are separated from each other and their instructor, the instruction needs to be mediated. Electronic communications are vital in distance education because they are used for interactivity between students and instructor.**

- (b) What is the nature of the distance education programs using digital technologies that are

currently available, or in development? Do they involve students using the Internet as a resource, communicating with teachers by e-mail, communicating with class members in chat rooms, or participating in classes conducted by teleconferencing? To what extent are they interactive? To what extent are they asynchronous? To what extent are copies made or kept, and by whom?

**NVCC's Extended Learning Institute (ELI), which began in 1975, provides home study instruction using electronic media. ELI offers 120 classes using electronic media to 3600 students each semester. Three degree programs are available totally at a distance. ELI offers 26 classes where student use the internet (World Wide Web) as a resource and as a means of communicating with each other and with their instructor. All of these classes are asynchronous and all are interactive.**

**Approximately 75 classes at NVCC, listed through Nova-on-Line, use the Web for instruction, either wholly or as supplement.**

**Course Guides are developed in print for ELI classes which are not on the Web. These include classes which have instruction by means of computer conferencing or bulletin board (modem required), voice mail conferencing system, audiotapes, and videotapes. Copies of these course guides are on file in the ELI office.**

**Classes offered primarily on the Internet do not have paper course guides. Print-copies of an introductory syllabus (one-page) are on file at the ELI office for all internet classes, as are copies of examinations for all the courses.**

**NVCC also offers approximately 10 classes each semester through compressed video. These classes are delivered to the other campuses of NVCC and throughout the Commonwealth of Virginia to participating community colleges. These classes are real time (synchronous). Copies of classroom materials including exams are kept by the instructors.**

- (c) Are course materials made available in electronic form? To whom are they made available? What restrictions are imposed on their access, use, modification or retention?

**All ELI classes have course materials available in some electronic form: video cablecast, videotape, audiotape, voicemail, computer conferences, CD-ROM, and internet. The materials are available to all students who enroll in the specific course.**

**Restrictions: video cablecast: anyone may view them. The only restrictions are that a person must live within the cableviewing area and subscribe to the cable.**

**Videotape:** Students must rent the tapes or view them at the College Learning Resource Center (LRC). Only those students with a current ID may view them at the LRCs. Instructors may modify the video which they developed. Commercially produced videos may be modified, with permission, by adding on introductory video filmed by the instructor.

**Audiotape:** Students purchase these. No restrictions are imposed. Audiotape materials may not be modified except by the person who created them.

**Voicemail Conferencing:** Student voicemail boxes are protected by password. Students must be enrolled in a particular class before being assigned a voicemail box. The voicemail box is reassigned when the student is no longer enrolled in the class. Messages may not be modified except by the person who created them. The system administrator may delete classes when a term ends.

**Computer Conferencing:** Students' names are entered in the computer conferencing system upon enrollment in the class; the names are removed when the students finish the class. A password is required to enter and use the computer conference system. Instructional materials designed by the instructor may be revised only by the instructor or by the Instructional Technologist who assisted with the design. The system administrator may delete classes when a term ends.

**CD-ROM:** Students purchase CD-ROMs for those classes requiring them. There are no restrictions in buying and using the CD-ROMs. However, some CD-ROMs will permit use only for a set number of months. After the set time, they deny access.

**Internet:** Students are permitted access to the Internet classes only if they are enrolled in the class. Most classes are password protected. Instructional material on the Internet may be modified by the instructor who created them or by the Instructional Technologist who assisted in their design. The system administrator may delete class rolls when a term ends. Enrolled students have access to commercial databases via a proxy server.

**Compressed video:** a video tape is made of each class and is archived for one semester. The tapes are available to students who may have missed a class. They may be modified or edited by the instructor.

- (d) How are such programs funded? What proportion of the entities who develop or offer them are nonprofit? What types of fees are charged to students? Are the programs intended to, and do they, generate a profit?

**Northern Virginia Community College, as a public institution of higher learning, is funded through the Commonwealth of Virginia. All distance education programs are nonprofit. The Extended Learning Institute currently has a grant from the Alfred P. Sloan Foundation to develop 32 classes and three new degree programs offered through distance education technologies. No extra fees are charged to students for taking distance education classes.**

- (e) What proportion of such programs are accredited? By whom are they accredited?  
**All asynchronous and synchronous classes offered through NVCC are accredited by the Southern Association of Colleges and Schools.**

- (f) Who are the recipients of such programs? What communities are served? Are students primarily located in any particular geographic communities (e.g., urban or rural)? Are there particular criteria for enrolling in or otherwise gaining access to the programs? How many students participate in a program at a time? Are the programs made available to students in other countries?

**The students taking courses through ELI primarily live in the suburban/urban area of Washington, DC, metropolitan area. Very busy schedules (work, family) and the desire to avoid commuting (gridlock) are reasons for enrolling in distance education classes.**

**Some ELI courses are offered at other Virginia community colleges which serve more rural populations - Piedmont Virginia Community College; Dabney Lancaster Community College, Lord Fairfax Community College - through the Virginia Distance Education Network. More than 400 students are served each year.**

**Northern Virginia Community College also delivers courses to other community colleges in both rural and urban areas through the Virginia Distance Education Network. NVCC served 150 students in eight other colleges in Virginia.**

**ELI classes and degree programs are available to Virginia citizens residing overseas.**

- (g) At what level are such programs offered? Are they offered at the level of elementary school, high school, college, graduate school, or adult education? Are courses offered for credit, and as part of degree programs?

**All Distance Education programs are offered at the undergraduate level, specifically the first two years. They are offered for credit and as part of degree programs. For asynchronous classes, three Associates of Science degree programs (Business Administration, Engineering, and General Studies) are available through distance education.**

- (h) To what extent is new content created for such programs, and by whom? To what extent is pre-existing content used, and of what type (e.g., motion pictures, music, sound recordings, computer programs, books)? How is it used, and in what amounts?

**The teaching faculty have control over the contents of the courses in the program. They create new content, assisted by staff Instructional Technologists. Pre-existing content may be used in software programs, textbooks, and videos. When such materials are used, permission is gained for their use, either through licensing or through written permission.**

- (i) Are there institutional policies in place with regard to the creation and use of such programs? Is any instruction provided to students or teachers in connection with such programs regarding copyright law, or regarding the giving of attribution or credit?

**All printed materials are vetted by a copyright expert appointed by the College. Video materials are reviewed and permissions gained by ELI staff. ELI faculty are kept informed of copyright law and are required to give attribution or credit for any outside materials used in instruction.**

## 2. Role of Licensing

- (a) Where pre-existing content is used in distance education programs using digital technologies, to what extent do the persons or entities involved obtain permission for the use of that content? Is this accomplished by direct contact with the copyright owner, or in some other way? To what extent do the parties enter into negotiated licenses, or use form contracts?

**In connection with the use of pre-existing copyright video in tele-courses, this is monitored by the Extended Learning Institute. It is my understanding that written permissions are required for any pre-existing copyright materials which will be**

used and these are secured by the producer/instructor and/or Instructional technologist and retained in files at ELI.

The Television Center pays for unlimited use of a music library for college product. Any use of other pre-recorded music requires permission from the copyright holder along the same lines of video permissions.

Non-telecourse programs, such as promos, follow the same rules although these rarely utilize any copyright video/audio.

Use of copyright materials over the compressed video network follows the same criteria as on-campus classes as prescribed by the VCCS.

- (b) To what extent do the persons or entities providing such programs rely on defenses available under the copyright law in choosing not to obtain a license (e.g., fair use, section 110(2), or the doctrine of implied license)? To what extent do they use public domain material, and if so, of what type?

**Any use of materials for cable television falls outside of "fair use" and requires written copyright permissions.**

**Public domain materials, such as photographs or video from the National Archives or other government agencies require on-screen credit be given to the material holder. This is complied with.**

- (c) Have there been difficulties in obtaining licenses? If so, for what reason(s)? Are the difficulties different in nature or degree than for other types of uses, including traditional education and including multimedia uses generally?

**No difficulties to my knowledge, just very time consuming.**

- (d) To what extent can technology be used now or in the future to ameliorate any difficulties in licensing? Can it serve to facilitate the identification of rights holders, the clearance of rights and the process of obtaining licenses, including price differentiation based on such attributes as the user's purpose, need, institutional affiliation, or ability to pay?

**On-line licensing would save time and effort, but most copyright holders want to know what the material is going to be used for before giving or selling permission.**

- (e) What other options exist for making the permissions process easier? How likely is the development of collective or blanket licensing, or "one-stop shops," and within what time frame?

**States may wish to explore negotiating yearly payment for "blanket" educational licensing so long as the state and educational institutions keep control over use (for instance: materials can be used in courseware and course work but not broadcast or used for personal projects unrelated to teaching in an enrolled setting). However, this may be difficult to control and police.**

3. Use of Technology

- (a) What technologies are used to prepare and disseminate digital distance education programs? Are these technologies specifically developed or produced for the distance education programs, or are they generally commercially available?

**The following Web editors and software have been used to prepare and disseminate digital distance education: Netscape Composer, Microsoft FrontPage, Adobe PageMill, Macromedia Dreamweaver, SERF, Web Course in a Box, and Microsoft Publisher 98. The following software has been used, too: Adobe Photoshop, Illustrator, Premier; Macromedia FreeHand, Flash, Fireworks, Director, Authorware; Allaire Forums; Cold Fusion; CGI Script, Java, and Active Server Pages. All of these are commercially available.**

- (b) What technologies are available to protect the security of digital distance education

programs? In particular, are there technologies in use or under development that can prevent the unauthorized reception, use, or retention of copyrighted materials incorporated into such programs, or that can authenticate materials or protect their integrity? What is the time frame for the availability of such technologies? What parties or entities are developing them, and what type of costs are involved in implementing them?

**Currently NVCC has not developed specific programs to protect the security of digital distance education programs. Also some of the Web site creation products have password protection incorporated into them. We have also programmed password requirements for any mainframe access. We also can program specific Web sites to require a password to enter it when faculty have requested this. Four departments work on this: the Technical Applications Center, Extended Learning Institute, Technical Support Services, and Information Systems Development Office. All of these offices are under the leadership of the Associate Dean of Information Technology.**

4. Application of Copyright Law to Distance Education

(a) Is existing law adequate in addressing current and anticipated forms of distance education using digital technology? If not, in what ways is it inadequate? Are there reasons why digital transmissions should be treated differently from education through broadcasting or closed circuit technologies, or in a traditional classroom?  
**No. The law needs to specifically state that distance learning and traditional in-classroom activities must be treated the same. The law should encourage the use of new technologies in distance education including technologies coming in the future.**

(b) Is it preferable to deal with the copyright issues raised by digital distance education through specific exemptions like section 110(2) or through a flexible balancing approach like fair use? What role should be played by voluntary guidelines such as the Fair Use Guidelines for Educational Multimedia (sometimes referred to as the Consortium of College and University Media Centers (CCUMC) guidelines)?  
**The exemptions should be part of the law. Years of work went into the CCUMC guidelines and ended in no agreement.**

(c) If a new or amended exemption or exemptions for distance education were to be adopted:

- Which section 106 rights should or should not be covered?  
**The same basic fair use exemptions should apply.**
- What categories of works should or should not be covered?  
**All categories should be covered. There should be no distinctions between exemptions for in-class and distance education activities.**
- To what extent should there be quantitative limitations on the portions of a work that can be used?  
**There should be no more limitations on distance education fair use than on traditional classroom fair use.**
- Who should be entitled to the benefits of such an exemption? Accredited or nonprofit institutions only?
- How should the class of eligible recipients be defined?
- Should such an exemption be limited to nonprofit distance education activities?  
**Exemptions should be the same for in-class and distance education activities.**
- Should the use of technological measures to protect against unauthorized

access to, and use or retention of, copyrighted materials be required? If so, what types of measures?

**Educational institutions should include authentication procedures to limit access to enrolled students.**

- To what extent should the availability of licenses for the use of copyrighted works be considered in assessing eligibility?  
**Licenses are a fact of life, but many have restrictions that specifically forbid access from remote sites. Others have prohibitive prices. Distance education fair use law can give educational institutions and libraries something to refer to when negotiating licenses that may make the difference between purchasing the product/service or not.**
  - Should there be limitations on student copying or retention of the copyrighted materials?  
**No more than already exist.**
  - Should the provision of electronic reserves be included?  
**Yes. Libraries need to provide electronic reserves if they are to serve distant students.**
  - Should the provision of any information about copyright law be required as a condition for eligibility?  
**Copyright notices should be included on copyrighted materials.**
  - Are there other factors that should be taken into account?  
**The legislation should be written to be flexible enough to include technology that may not yet exist.**
- (d) What would be the economic impact of such an exemption, including the impact on the actual or potential markets of copyright owners of different types of works?
- (e) What would be the international implications of such an exemption? Would it be consistent with U.S. treaty obligations?