

Building A Common Position On Copyright In Support Of Open And Distance Learning- An Educator's Perspective

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INTRODUCTION

The use of the Internet and digital resources is an increasingly important component of instruction both in the Elementary/Secondary sector and in the Post Secondary sector. Schools and learners in rural and remote areas of all jurisdictions are integrating the use of digital technologies as a means to provide equitable access to a full range of courses and instructional supports. Everyday learners and teachers download material, share projects and resources, store information on their computers and networks. Many of the day-to-day activities of instruction in a constructivist environment are in violation of current copyright law across the Commonwealth. Many uses of digital technologies in instruction are in violation of current copyright law in Commonwealth countries. The education sector across the Commonwealth must examine both its current practices and desired pedagogical reform and determine how copyright reform can best serve the needs of learners across the Commonwealth.

Education is key to economic development and to the improvement of quality of life for individuals in both developed and developing countries. The use of digital technologies to support teaching and learning is especially critical in environment where traditional resources are lacking and learners are dispersed across large geographic areas. If copyright law limits or precludes the use of the Internet or other digital technologies, the hope of education providing the means for Commonwealth countries to improve the lot of their citizens will be greatly diminished.

It is critical that participants at Pan Commonwealth Forum on Open Learning Three engage in a discussion and debate of these important issues. The result of these discussions needs to be a draft position on digital copyright for Commonwealth countries.

VIRTUAL CONFERENCE FEBRUARY 2003

The Commonwealth of Learning hosted a virtual conference on Copyright during February of 2003. Some the discussions that took place during that conference are worthy of review and may stimulate further discussion.

The first question posed by the conference moderators was regarding defining an appropriate public policy for Educational use of the Internet. Some of the comments of the participants were as follows:

1. "The cost of educational materials, digital licenses is prohibitive for developing countries. Copyright makes educational material unavailable to the developing world and thus continues the digital divide.
2. The difficulty expressed by participants from "western and northern" countries regarding obtaining clearances for digital materials is even more extreme in the "south".
3. Open source software should be available to developing countries and to the education sector everywhere. A need was described to differentiate between the "for profit" world and the "not for profit" world.
4. A need to think from a different perspective, for the "north" to consider how it will react as more and more content is developed and made available from countries that now have limited access to the digital world. Should we develop new approaches and perspectives in this new environment or continue to rely on ones rooted in several hundred year old laws.
5. Some in the developing world would consider that many of the benefits enjoyed by the industrial world have come at the violation of the intellectual property of the less developed world.
6. Some called for some sort of special dispensation for developing countries while others expressed the belief that special dispensations were not appropriate.
7. Traditional knowledge developed, held and shared by the developing world has been copyrighted/trademarked etc and marketed without benefit of permission of those who held that knowledge in trust.
8. The decisions made in the industrialized countries regarding copyright will have a direct effect on the developing countries.
9. Access to digital materials, materials online and in other formats is essential for developing countries as they use increasingly use distance learning to reach their populations.

10. Some participants talked about the option of ignoring copyright in developing countries, others indicated that it is not that simple and that given the interdependency on other international agreements and financial support might not be practical. Further that ignoring of copyright entirely might have negative implications for a country's own economic development" 1

It is apparent from these comments that copyright and access to digital materials and the Educational use of the Internet is of major importance to developing countries in the Commonwealth. Let me assure you that it is no less critical in developed countries such as Canada. Canada a vast country with a small population with many citizens in rural and remote areas has a critical need for appropriate copyright legislation. Having said that it is of some importance to note that there is great reluctance on the part of our legislators to provide exceptions to Copyright law that will permit legal use of material found on publicly available websites in our educational institutions without mandated payment of fees to access that material.

The second topic addressed during the virtual conference was the changes to the Copyright Act that are being sought by the education sector in Canada to permit use of material found on publicly available websites by educational institutions without additional copyright clearance or payment of fees. We proposed that one separate the Internet into a Free section and a Fee section by the use of technological protection measures such as password protection or other encryption. In this manner students will clearly know what can be used and what must be paid for. Some of the comments from the virtual conference were as follows:

- a. "The position that not only should freely available materials be available to the educators and students but that the education sector should take a much broader approach. This approach would be to not use materials from traditional publishers or more specifically commercial materials. This was a call for the education sector to use open source software and begin producing digital materials themselves and making it freely available to the education sector. This position agreed with the background papers position of freely available materials being available for use in education and the need for encryption if the owner of the material does not want it to be used in education. Finally this position

1 Noel, W. and Chad, R. (2003) COL Virtual Conference on Copyright Summary, www.col.org

- called for a firm defence of the interpretation of copyright law in favour of the education sector as opposed to presuming that the law should automatically protect the rights holder. This was enunciated as extending the exceptions currently found in the print world to the new digital world.
- b. There were a number of suggestions here, all indicating that the proposal did not go far enough. Some of them were in regard to the difficulty obtaining clearance for materials, the restrictions on how material can be used in education and some that simple encryption is not a sufficient barrier to stop educational use of the material.
 - c. The position taken in the background paper and proposed by the moderators to permit use of freely available materials by educators and students in formal courses of instruction was seen as a reasonable position and the responses were that this went far enough to ensure adequate access to materials by educators and students.
 - d. The position that the only changes needed are amendments to strengthen fair dealing provision in copyright law.
 - e. The position that changes to the copyright act were not needed. One participant simply stated that there should be no difference between the print medium and the digital medium. Another position was articulated in detail by representatives of Access Copyright, a Canadian Collective. This position contends that the education sector should obtain a license to use the Internet and through technical monitoring the holder of the license would determine what the fee would be for use of materials found on the Internet, some would be zero rated and others would have a fee for use.”²

The Canadian education sector has proposed a middle of the road solution which in our minds is fair. Does the Commonwealth of Learning want to adopt this notion of Educational Use of the Internet amendment as part of its policy. Are there other additions to the policy that should augment this one policy position? For instance, what is the status of “fair dealing” across the Commonwealth? In Canada, fair dealing does not include for instruction. Should a policy for copyright include the notion of fair dealing to include for learning? And should the notion of fair dealing which is typically interpreted as using a part of a work

² Noel, W. and Schad, R. (2003) COL Virtual Conference on Copyright Summary, www.col.org

be explicitly stated to include whole works, like images, maps and research documents?

There was much discussion of the use of Open Source software. Both as a means to avoid the issues of limitations set on use in the proprietary software environment but also as a tool for skill development in local communities. How does one build a creative workforce for the digital world if your learning experience is only with the use of licensed software and you have limited exposure to the development of tools and resources for yourself. Do we wish to limit our youth to the consumer marketplace or do we want to build capacity in our learners and increase the amounts of local resources available on the Internet and in the digital world?

The third and final question posed during the virtual conference was regarding how to define liability for use of the Internet. Should a school that provides Internet access to students, staff and perhaps community members be held liable for any illegal activity that occurs using that Internet access? Could a school afford to provide Internet access if it could be held potentially liable for such use?

Some of the comments during the virtual conference were:

1. "Liability should be avoided, as it is impossible to police on the Internet without severely restricting the Internet itself.
2. There should be liability for the materials the Institution itself posts.
3. Educational institutions should not be liable for materials posted by those who use their network.
4. Educational institutions should be treated differently than other ISPs.
5. There are similarities to the telephone system; the telephone company is not responsible for what is transmitted across its lines. However knowledge of illegal activity brings with it the responsibility to report the activity.
6. Only appropriate legal authorities under the rules that apply for their actions should be able to search a network. There are important issues of privacy that cannot be ignored.

7. Institutions should have clear policies for the users of their networks but the users themselves should be liable for the material they post on the network.
8. Copyright is basically unenforceable so why should educational institutions have to bear the cost for something they can't control.
9. A blanket license would eliminate the problem of liability."³

There are other issues for Internet Service Providers who may be educational institutions. At the University of Regina it is not uncommon for us to receive an email notice from someone claiming to represent either an individual creator or a publisher or a motion picture association. In the email they state that someone on our network is illegally posting or distributing their material, images, film, etc. and they demand that we take action to stop the violation.

What should the institution (the ISP) do? There is an accusation but there has not been any due process, no opportunity for the individual or individuals in question (if it can even be established who the individuals are) to defend themselves. Do we want to establish copyright laws that would give rights holders more power under the law than what is accorded to anyone else in the judicial process? If we do what will be the effect on the medium of the Internet and ultimately on the use of the Internet as an educational resource and development tool?

SOME EXAMPLES OF COPYRIGHT ISSUES:

1. A student downloads an image and photograph from the Internet and cuts and pastes them into a printed report. The student also cuts and pastes text and a poem and adds them to the report. The student takes a print copy home and gives to his/her family.
2. A teacher copies news articles off the web and put them in her website for her students and leaves them there for the whole semester. Students go to the teacher's website and download the material and use it in their projects.

³ Noel, W. and Schad, R. (2003) COL Virtual Conference on Copyright Summary, www.col.org

3. A student builds a powerpoint presentation using materials found on the web, photocopied and scanned from texts and adds sounds clips. The student then posts the presentation on the school website.
4. A teacher in a classroom shows a video to her students and transmits that video to several students located in another community who are part of her class.
5. A teacher plays a song in her classroom and makes that song available for her distance education students on a secure website.
6. A student in one class downloads material that is found her teacher's website and emails it to a friend in another community who is studying the same subject in that community. That student uses the material in her project and posts it one the school website in her community.
7. A student copies images of a famous soccer player and puts them in his report which is then posted on the school website.
8. A teacher scans print material which was purchased for school use and emails it to a distance education student so the student has access to the same material as the students in her traditional classroom.

All of these have potential copyright violations. It is important that good instructional practice and copyright law are not at odds. If the copyright law revisions that are occurring to modernize copyright law in light of the digital world do not take into account the needs of the education sector then the quality of learning in all of our schools is in jeopardy.

We have the opportunity at this conference to assist the Commonwealth of Learning establish a draft policy on copyright. As each of our jurisdictions struggle with the copyright reform process it will be of immeasurable value to have a Commonwealth of Learning policy on copyright for the digital world. The digital environment brings us all together and provides for a global community of learners such as never has been seen before. It is critical that we as an educational community work to insure that copyright laws across the Commonwealth do not restrict or inhibit the educational use of digital resources and the Internet.