

# Educational Technology and Intellectual Property

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## INTRODUCTION

In today's digital world, leaders and other educators can manipulate a wide variety of information for authentic projects. In the process, everyone needs to acknowledge the idea creators and their intellectual property. As technologies have expanded, and their production has become more sophisticated, the legal regulations surrounding their use have become more complex. With the advent of interactive social media and increased resource sharing, as well as growth in distance learning opportunities, complying with the legal use of information technology can be daunting. In any case, leaders and other educators should be aware of the more important aspects of technology-related copyright laws and regulations. This chapter provides an overview of copyright law and fair use for educational research purposes.

## LEGAL BACKGROUND

A central aspect of education is intellectual pursuit and the recognition of great minds. Yet teachers bemoan the rise in cheating, which technology facilitates. On their part, students have a more lax attitude about intellectual property. Particularly with media and crowdsourcing, which foster collaborate knowledge generation, identifying the originator of an idea can be difficult to ascertain. Furthermore, the informational content itself may be dynamic so that the authorship and copyright may change over time.

Although intellectual property is sometimes used interchangeably with copyright, the former is

a broader concept. Copyright protects creative and original ideas that are recorded in tangible form. Other U. S. intellectual property laws deal with trademarks, patents, trade secrets, and licenses.

Copyright laws seek solutions to give authors fair compensation for sharing their work. Begun as a way to give scientists and inventors lead time to prevent others from using their work without permission, copyright laws in the United States have become more far-ranging, both in terms of expanded formats as well as issues of authorship and access. According to current law, the copyright owner has the exclusive right, and can authorize others, to reproduce, distribute, display, publicly perform, and make derivative works based on the original work. The duration of the copyright term has lengthened over the years, starting from a length of 28 years (as established in 1790) to 70 years after the death of the author, according to the 1998 Act.

Publishing has also impacted copyright over time. Reporters increasingly get personal credit and remuneration for their contributions, which historically were considered solely work for hire. Publishers create copyright agreements to cover authorship rights based on format. Multimedia copyright laws can be very specific: restricting resizing or other image manipulation, stipulating the length of music or video that can be copied legitimately. Fortunately, education falls under the umbrella of Fair Use, so restrictions are loosened up a bit in order to support personal research.

The chief statute driving copyright law is the Copyright Act of 1976, which became effective in 1978. Several factors were included for the first time in this piece of legislation: a codification of

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fair use, the right for an author to receive copyright for an unpublished work, and the divisibility of authors' rights. The Act includes definitions, delineates what is copyrightable, and describes copyright rights and limitations.

The Digital Millennium Copyright Act (DMCA) was added to the Act in 1998, largely to conform to international treaties (note that no international copyright law exists) that dealt with technological issues, particularly online material. DMCA limits database company liability, and addresses digital preservation.

Educators and leaders also need to know about the 2002 Technology, Education, and Copyright Harmonization (TEACH) Act, which impacts copyright usage in distance education or in cases where digital information is transmitted as a supplement face-to-face instruction. Displays and performances can be disseminated only for the period of the course and only to those students who are enrolled in the course. Likewise, if teachers copy an article for a face-to-face class, then they can link to the same article online, depending on the magazine database license agreement. A better solution is for the teacher to provide the citation, and ask the students to access the article themselves from the library's database collection. However, the teacher should *not* download the whole magazine issue just because it is technically possible; that action probably does not comply with copyright law.

Other laws exist to support copyright law such as anti-piracy. For instance, the 1997 No Electronic Theft Act expands criminal prosecution of copyright infringements to individuals who do not benefit commercially. The Family and Entertainment Copyright Act of 2005, updated and absorbed the 1997 Act about theft, and also addressed artists' rights.

Particularly with the advent of social media in which students might produce and disseminate information publicly, copyright applications are stricter. A few examples of technology-relevant copyright practices follow.

- Images should not be resized, cropped, or changed in context without explicit permission.
- Photos of recognizable people require written permission if they are to be broadcast.
- Scanning or digitizing work is considered reproducing it, and requires prior permission if shared publicly. Other rights may be covered by patent law, such as copying code.
- Music and video downloads can be very problematic. It is wisest to use pre-approved sites such as iTunes.
- Computer program appearance, graphics and sound may be protected from copying, depending on the company's licensing agreements.
- Slander and libel can occur on social networking sites such as MySpace and Facebook; students might not realize that they can be held legally responsible for their comments, and even arrested and prosecuted.
- Information about health and legal issues should include a disclaimer so the author is not held legally responsible in case the reader uses that information and experiences negative results.
- Each database aggregator and disseminator (such as video streaming) has a unique licensing agreement that covers copyright issues. A good rule of thumb is to apply the most conservative guidelines in order to avoid case-by-case decisions.

Further complicating matters, different countries have different copyright guidelines, so information accessed from around the world may be subject to conflicting laws. International aspects also impact copyright in several ways. At present, few copyright laws exist. How, then, are royalties handled when publishers are international or offer translations of works? They are done by international treaties or agreements, usually on a

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