

Chapter 6

Legal Issues in the Use of Technology in Higher Education: Copyright and Privacy in the Academy

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ABSTRACT

In recent years, explosive growth in the use of technology in higher education has resulted in numerous changes to institutional policy and practice. This chapter is focused upon two technology-related issues, copyright and privacy, that have had a significant impact on such policy and practice. The chapter includes a brief review of the historical context, of the legal dimensions, and of current practice related to these issues. As is also reflected in the body of literature on these topics, a heavier emphasis is placed on copyright.

INTRODUCTION

In recent years, innovations have led to exponential growth in the use of technology in higher education. As a result of this explosive and often unpredictable growth in the variety, the availability, and the use of technology, institutions

of higher education have been forced to modify existing policies or to develop new policies to maintain legal practices. Policy development is perhaps most difficult when circumstances necessitate haste and when the potential consequences associated with the policies are significant. The rapid nature of technological innovation and the critical role played by technology in every aspect of today's society make for just such difficult

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circumstances. As might be expected under these circumstances, policies have had to be dynamic and change as technology changes. Additionally, issues that should have been addressed with policies may have been overlooked as newer and, perhaps, more important issues arose.

No one chapter could address all of the legal issue policy changes in higher education that were technology-driven in the past year, much less all of them over the past many years. As such, the focus of this chapter will be on two technology-related issues, copyright and privacy, that have had a significant impact on policy and practice in higher education. As is reflected in the literature, a heavier emphasis will be placed on the issues related to copyright.

The internet and World Wide Web are relative newcomers to the Academy but the opportunities they offer for the creation and dissemination of knowledge are virtually boundless. Granted, some of the educational issues related to the use of the internet existed prior to its development but these issues have had to be reassessed in light of the ease of information sharing offered through this medium. Copyright, for example, has been an issue for higher education at least since the development of the printing press. Although an argument can certainly be made that copyright issues only arose because of the use of technology (e.g. the printing press), for the purposes of this chapter, technology will refer to digital age issues such as the electronic storage and transmission of data, etc. In today's world, many copyright issues are specifically related to the use of such technology and were not an issue prior to the use of, for example, the internet and electronic communication. Another technology-related issue that has necessitated the development and/or reassessment of policies in higher education falls in the area of legal practices in electronic communication. Student and faculty privacy issues will be addressed later in this chapter.

COPYRIGHT

Copyright law is that body of law dealing with identifying and securing author rights with respect to writings and other creative works. These rights allow the author or creator to control the use of the work and the creation of derivative works by others. According to the United States Copyright Office (2009), copyright means, literally, "the right to copy" (p. 1) and the concept provides legal protection for "original works of authorship, including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations" (p. 1). Copyright extends to the expression of an idea or discovery in some tangible medium and its protection begins the moment the idea or discovery is fixed in such a medium. Copyright does not extend to the idea itself but, rather, to the expression of the idea. A theory, for example, is not copyrightable but the paper in which the theory is described is copyrightable and may not be used, except in certain limited circumstances, without the author's permission.

The concept of owning the right to use, edit, reproduce, and perform or distribute your work dates, at least as evidenced by the codification of laws protecting such rights, to the period after the development of the printing press. Deazley (2004) indicated that, in England, laws such as the Licensing Act of 1662 protected printers, specifically the Company of Stationers, and granted them a near monopoly on rights related to publishing. Additionally, this act allowed for censorship of the press on the part of the monarch and government. In 1710, however, Parliament passed the Statute of Anne which established an author's ownership for a period of 14 years and, if the author was still alive, renewable for 14 more (Association of Research Libraries, 2009). In the United States, Congress enacted the first copyright law in 1790 and, in 1870, centralized copyright functions in the Library of Congress where they continue to reside (United States Copyright Office, 2009).

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