

## **Campus perceptions of fair use violations: implications for university policy development**

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### **ABSTRACT**

Over the past decade, numerous incidents of students illegally downloading files and software have occurred (Tenant, 2008). While the Recording Industry Association of America (RIAA) has made it a point to seek out and prosecute people who practice illegal downloading of copyrighted content, it recently announced that it would focus less on lawsuits and more on prevention and education (Slattery, 2008; Vijayan, 2008). Furthermore, a new law recently passed by Congress also places part of the burden on universities, as this is where a great deal of the copyright infringement activity has occurred in the past. The proverbial clock has begun ticking.

Keywords - music download, Higher Education Opportunity Act, Fair Use Policy, copyright infringement

**H.R. 4137**

The Higher Education Opportunity Act (H.R. 4137), written to amend and extend the Higher Education Act of 1965, was introduced in Congress on November 9, 2007 and signed into law by President Bush on August 14, 2008, becoming Public Law No. 110-315. It is composed of eleven sections and is 431 pages long. What makes this legislation so important is the content of sections 488 and 493 which mandate that institutions of higher education (IHEs) develop plans to combat illegal downloading and peer-to-peer distribution of intellectual property as well as policies and sanctions related to copyright infringement. Many IHEs have largely ignored this issue in the past. While they have known that such student behavior has occurred, many institutions have largely taken a laissez-faire approach to enforcement. This is about to change as the amendments to this act take effect for academic year 2011-12 (Memorandum, 2008). Section 488 delineates that IHEs development policies and sanctions related to copyright infringement:

“(P) institutional policies and sanctions related to copyright infringement, including—

“(i) an annual disclosure that explicitly informs students that unauthorized distribution of copyrighted material, including unauthorized peer-to-peer file sharing, may subject the students to civil and criminal liabilities;

“(ii) a summary of the penalties for violation of Federal copyright laws; and

“(iii) a description of the institution’s policies with respect to unauthorized peer-to-peer file sharing, including disciplinary actions that are taken against students who engage in unauthorized distribution of copyrighted materials using the institution’s information technology system (H.R. 4137, 2010).

Section 493 stipulates that IHEs will develop plans and offer alternatives to illegal downloading:

“(29) The institution certifies that the institution—

“(A) has developed plans to effectively combat the unauthorized distribution of copyrighted material, including through the use of a variety of technology-based deterrents; and

“(B) will, to the extent practicable, offer alternatives to illegal downloading or peer-to-peer distribution of intellectual property, as determined by the institution in consultation with the chief technology officer or other designated officer of the institution.” (H.R. 4137, 2010).

Several IHEs have already begun to develop policies and websites to inform students about copyright infringement. Among these are Yale University (P2P: Free legal alternatives to file sharing, 2010), the University of Michigan (File sharing, 2010), the University of Toledo (The University of Toledo: Legal Alternatives to Peer-to-Peer File Sharing, 2010), and Oregon State University (File Sharing @ OSU (2010). While each one has basic information about file sharing and copyright infringement, the University of Michigan site has specific sections for content creators, instructors and students. It also spells out responsibilities for both users and the university. Oregon

State University has included an on-line tutorial on copyrights complete with a quiz allowing its students and faculty to test their knowledge.

For those institutions that need to develop a policy, these examples can serve as guidelines and a starting point. Each institution has its own unique circumstances and needs and any such policy should be a cooperative effort between administrators, faculty, staff and even students. Many administrators and staff may not be aware of the myriad of methods and programs that students are using to download and/or share files illegally.

### **What is the Fair Use Policy?**

The urgency to meet the requirements of H.R. 4137 aside, a discussion on Fair Use is in order. The Fair Use Policy is defined in section 107 of the U.S. copyright law and states that, “reproduction of a particular work may be considered “fair,” such as criticism, comment, news reporting, teaching, scholarship, and research” (U.S. Copyright Office – Fair Use, 2006). The U.S. Copyright office also provides four factors to judge if the usage of a copyrighted piece of work is “fair” and these factors are the following:

1. The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes
2. The nature of the copyrighted work
3. Amount and substantiality of the portion used in relation to the copyrighted work as a whole
4. The effect of the use upon the potential market for or value of the copyrighted work

### **Why are Universities Concerned with Fair Use?**

Some colleges and universities currently have policies and procedures regarding copyright and “Fair Use” but others still do not have any policies in place. It is important for colleges and universities to implement policies and procedures regarding copyright and “Fair Use” for a several reasons. First, the federal government passed the Higher Education Opportunity Act in August of 2008, which requires universities and colleges to have a plan to prevent copyright infringement and to inform students of the copyright laws and “Fair Use” by July 2010. This law also requires them to inform the students of legal alternatives for downloading and sharing digital files (Greenwood, 2009).

Second, copyright violations could cause severe financial implications for the University as well as ruin the University’s reputation. There have been many incidents and lawsuits of copyright infringements in Universities across the country. These incidents include the University of South Florida, University of California, Georgia State, and Cornell University, among others.

Guidelines for “Fair Use” were added to the Copyright act of 1976 but they are very vague. Because “Fair Use” can be interpreted differently depending on the circumstances, it tends to cause a great deal of confusion for students as well as for the faculty. Students who have grown up with downloading music and media digital files may have a different point of view on the copyright laws and “Fair Use” as it pertains to the digital world. These students have become so accustomed to downloading files from the Internet that it is like second nature for them. For instance, 13 Students at the

University of Florida were sued by the RIAA for downloading music. There are many more students at other Universities who were also sued. Since then The University of Florida has implemented software to detect illegal file downloading and is holding the students accountable by forcing them to accept USF's policy on a redirected web page (Emerson, 2008).

Students need to be more aware and have a better understanding of the copyright laws and "Fair Use." Students are also now conducting most of their research online and using electronic books instead of hardcover textbooks. Students may not realize that downloading an image for a class presentation or making copies of their electronic textbooks is a violation of the copyright law. They also need to be aware that in some cases digital images, text, media might be acceptable to copy or download providing they meet the "Fair Use" guidelines.

Professors as well as university administration also could use additional clarity on the issue because of new technology and the increased use of electronic reserves. The professors may not be aware of the guidelines pertaining to electronic reserves, which if violated could cause legal issues for the university or college. For example, recently Georgia State University was sued because of the way they used "E-Reserves" and other "electronic course content" (Alganese, 2008, 16). Georgia State was illegally posting and sending copies of its "electronic course content" via its "Blackboard/WebCT electronic course management system" (Alganese, 2008; Howard, 2008).

### **Crafting a Policy**

The University of Tampa is a private university in West Central Florida with approximately 6,000 undergraduate and graduate students. The University of Tampa does have a 1996 policy in place for guidelines on copyright and intellectual property as it relates to software and digital files, but it is very vague and does not mention copyright issues related to electronic books, electronic reserves, or "Fair Use." Because of the federal requirement for all universities to have a stated Fair Use policy by 2010, a committee of faculty, library and information technology administrators, and students sought to investigate the current situation of Fair Use policies in place at other universities as well as study the student body about their perceptions of Fair Use to see what types of intervention, education, or solutions could be offered.

### **Fair Use Policies at Other Universities**

Some of University of Tampa's local direct competitors do have policies and procedures in place regarding copyright and "Fair Use" for both its students and faculty. Eckerd College has a copyright and "Fair use" policy located on the Electronic Reserves web page specifically for Electronic Reserves. The policy goes into detail on how Electronic Reserves should be used. They also require students to read and accept a copyright notice before allowing them to view the Electronic Reserves. Copyright and "Fair Use" is also noted in Eckerd's Information Technology Services policy. Both the copyright and "Fair Use" is fully explained and specific examples of "Fair Use" are given (Eckerd College Copyright Policy, 2010).

Hillsborough Community College has a copyright and “Fair Use” policy included in its Acceptable Use Policy on the Office of Information Technology web page. There is just a short paragraph with a brief description of the copyright law infringements and “Fair Use” (Hillsborough Community College Acceptable Use Policy, 2010).

National Louis University has detailed guidelines for copyright and “Fair Use.” They have a link for Copyright Compliance Guidelines that has a separate link for their Electronic Reserves policy and a link for their Copyright and “Fair Use” policies. Their copyright and “Fair Use” policy has a definition of copyright and “Fair Use” as well as a description and example of each “Fair Use” guideline (National Louis University – Copyright Compliance Guidelines, 2010).

The University of South Florida has copyright and “Fair Use” policies and procedures documented in their Policies and Procedures manual. USF had detailed definitions and descriptions and they had the best examples of each “Fair Use” guideline. They gave a description of each guideline and then followed up with an example of “what would be considered fair use” ([usfweb2.usf.edu/us/usfgc/gc\\_pp/GENADM/Gc105.htm](http://usfweb2.usf.edu/us/usfgc/gc_pp/GENADM/Gc105.htm)). USF also has links about copyright information on its Information Technology web page (University of South Florida Copyright Information, 2010).

In addition to the local competitors, other universities have also implemented their own unique policies and procedures. One university in particular has been well ahead of complying with the Higher Education Opportunity Act in August of 2008. The Brigham Young University created a Copyright Licensing Office in 1999 to address these issues:

- “Copyright education, training and policy advice”
- “Assure effective and appropriate licensing practices”
- “Manage licensing /rights information in a centrally accessible database”
- “Access copyright policy and legal developments”

(Quarterley, 2009, 94).

Brigham Young University’s success rate has been very high with implementing the Copyright Office and with creating awareness. Students and faculty are well informed and knowledgeable on copyright and “Fair Use” issues. They no longer ask about the basic questions but focus on issues related to a specific area or related to a new technology.

## **Research Study**

In order to provide a foundation for establishing the 2010 University of Tampa Fair Use Policy, the graduate and undergraduate students at the university were studied to better understand their perceptions and practices with regard to Fair Use. The study took place in two formats: qualitative research in the form of focus groups and depth interviews, and quantitative research in the form of an online survey.

### ***Qualitative Research.***

Graduate and undergraduate students were asked a series of discussion questions, either in 4 or 5-person focus groups, or via depth interviews. 45 students were studied

(15 graduate and 30 undergraduate). In general, students understood the concept of plagiarism, but not the concept of Fair Use. Additionally, respondents had a much better understanding of correct use of traditional, printed materials than they did of proper use of digital, electronic materials. Downloading music illegally was considered a “social norm” and most students had never considered that taking an image/photograph from the internet might have copyright issues. Some of the following quotes exemplify common student attitudes:

- “If I can Google it, it must be public information that anyone can use however they want.”
- “Anything online is in the public domain, which means the public can use it.”
- “If I paid for a song, then it is mine, and I should be able to copy it or give it away as I choose.”
- “I pay a lot of tuition here, so nobody should be monitoring or restricting my use of the campus network.”

### **Quantitative Research.**

All students registered at the University of Tampa (population census) were contacted via email to respond to a web-based survey. Survey questions were divided into attitudes and beliefs, actual practices, and demographics. Although response rates were at 9% overall, the number of students responding made the sample statistically valid at a 95% confidence interval and with the ability to project the results to the overall student population at +/- 5 percent error rate. The survey was implemented on SurveyMonkey™ software during the Spring 2009 semester.

### **Summary Results**

Interestingly, the majority of students (68%) reported they were familiar with the University’s Fair Use Policy, although one did not exist. When surveyed about the details of what Fair Use constituted, most were confused, although overall, graduate students had more correct perceptions than undergraduate students did.

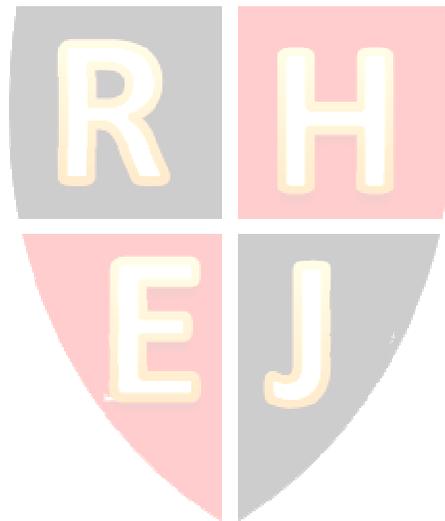
As in the qualitative research, students are more cognizant of “traditional” policies dealing with plagiarism, “sharing” other student work, photocopying textbooks, or copyright issues with traditional print materials such as books, magazine articles, or printed photographs. However, when dealing with digital/electronic sources of information, students were unaware or unsure of copyright issues. They also were completely unaware of Fair Use issues in the classroom, assuming if an instructor emailed them something or posted an item on Blackboard, the item must have already been “checked out” as permissible. The concept of “harm” to others owning the copyrights were also interesting, with many students believing that once they paid for an item (via subscription, tuition, one-time purchase, etc.) they had free license to do with that item what they wanted (such as sharing an e-textbook or making copies of a music file). Many felt that if they perceived the copyright holder had already made sufficient profit on the item, or the item was “old” that no fees or permissions were necessary.

In general, all students agreed that any policy enforced on a university campus should be clearly communicated to the student and available in a number of venues

(online on Blackboard, on the University website, in the printed student conduct brochure, noted in syllabi, and covered in orientation). The students were adamant that the policy would not invade their privacy, such as with a monitored network, but that they understood that access would need to be blocked to illegal sites, such as for downloading music. However, students also wanted alternatives to illegal sites, and preferred that the university provide them with databases, libraries of digital images, and available music. Such items are already available and have been implemented at other universities.

### **Conclusion**

Universities that have not yet constructed their Fair Use Policy will need to consider legal situations that have already occurred at other universities, other existing policies, as well as current student perceptions at their own university. Clearly communicated policies, to both students and faculty, will help prevent legal implications when the 2010 requirement goes into effect. The clock is ticking.



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