

Copyright in Educational Communities: Recent Developments in Law and Policy

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- Copyright overview
 - What is prohibited
 - Who is liable
- Recent developments
 - Peer-to-peer
 - Notice and take-down
 - Distance education

The Copyright Act

- Applies to “original works of authorship” like books, plays, movies, songs, “fixed in any tangible medium of expression.”
- Protects expression not ideas.
- Generally gives author exclusive rights to reproduce, distribute, publicly display, publicly perform, and make derivative works.
- Civil and criminal remedies.
- Limited by term, “fair use,” other exceptions.

Fair Use

- Sometimes excuses infringement for purposes such as criticism, comment, news reporting, **teaching, scholarship, or research.**
- Depends on purpose of use, nature of copyrighted work, amount used, and effect on potential market for copyrighted work.
- **Guidelines for classroom use** establish minimum standards.

Copyright Liability

- Direct
- Secondary
For, e.g., “one who, with knowledge of the infringing activity, induces, causes or materially contributes to the infringing conduct of another.”
- → potential liability for providers of internet service, including educational institutions

Liability Limitations for ISPs

- 17 USC 512 creates **safe harbor** from monetary liability for copyright infringement
 - Applies to transmitting material on behalf of users, caching material on behalf of users, storing material on users, and linking to infringing material.
 - Requires repeat infringer policy to qualify for safe harbor
 - **Requires take down in response to claims of infringement to qualify for safe harbor**
 - **Authorizes fast-track subpoenas**

Educational ISP Dilemmas

- How to respond to fast-track subpoenas
- How to respond to infringement notices

Peer-to-Peer and Privacy

- 17 U.S.C. 512 expedited subpoena process
 - Issued by court, but without judicial oversight
 - Requires expeditious disclosure of information sufficient to identify the alleged infringer
 - Some universities have resisted, citing Family Education Rights and Privacy Act
- RIAA vs. Verizon: expedited subpoena process not applicable to peer-to-peer

Notice and Take-Down

- For some safe harbors, must respond expeditiously to remove material upon receipt of notice of claimed infringement.
- But, refusing to take down does not establish liability.
- Online Policy Group v. Diebold, Inc.: ISP fights back

TEACH Act and Distance Education

- Existing exceptions for face-to-face display and performance of copyrighted works in the classroom
- Expanded (2002) exceptions for distance education
- Requires adoption of institutional copyright policies, limitations on access to and retention of materials, etc.
- Complicated requirements and limitations
- Does not supplant fair use

Other hot topics in copyright

- DMCA anti-circumvention
- Copyright term extension, Eldred v. Ashcroft
- Alternatives: open source software, creative commons

