NO SAFE HARBOR: ACCOUNTING FACULTY'S UNDERSTANDING OF COPYRIGHT, FAIR USE AND ITS ETHICAL IMPLICATIONS

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Abstract

Faculty knowledge of copyright in the age of information and litigation is of increasing importance; but, what do accounting faculty actually know? This study surveyed accounting faculty concerning their knowledge of current copyright law. Results indicated that generally speaking, faculty continue to be unaware of possible litigious situations. And furthermore, do not appear concerned as to whether it is their duty to understand copyright law. However, it appears that two factors may increase a faculty member's level of knowledge. Those two factors were: (1) length of time teaching and (2) amount experience teaching on line. The results of this study supported earlier studies done by other researchers. It appears that as more institutions enter the digital arena and move forward with plans to offer classes online, it would behoove the faculty to avail themselves of resources offered by their own institutions, as well as resources in the literature.

INTRODUCTION

Research on faculty knowledge of copyright, fair use and intellectual property appears to have garnered scant attention by researchers, even though it is a topic which will continue to gain in importance over the course of the next few decades. There is plenty of anecdotal evidence when conversing casually with faculty, i.e. that many think ignorance of the law is a better policy and defense than understanding what their rights and obligations

are concerning copyright. However, ignorance is not necessarily bliss, and there is legislation now on the books which puts the responsibility for understanding copyright squarely in the domain of the faculty and their institution. Many faculty are unaware of the changes in the legislation, of the litigation over intellectual property rights which has occurred in recent years, and how they may be vulnerable, even as they assume they are within the safe harbor of Fair Use.

On even a surface level faculty (in general) appear to be unaware of how copyright and fair use pertains to online and face-to-face instruction. Even faculty involved in course design are perhaps not as aware of potential ethical and criminal violations when it comes to including materials in a course designed for distance education. Faculty who teach courses in an online environment may be especially vulnerable to litigation if they are not adhering to their institution's copyright policies; or if their institution has not kept current with online copyright laws. "Gaps in current campus policy likely exist because many on campus are unaware that fair use tenets of the venerable Copyright Act of 1976… do not wholly extend to distance education."(DiRamio & Kops)

However, as more institutions enter the digital arena and move forward with plans to offer classes online, it would behoove the faculty to avail themselves of resources offered by their own institutions, as well as resources in the literature. Ignorance of institutional policies regarding faculty responsibilities will not make a faculty member less culpable; nor will it guarantee immunity from prosecution if they inadvertently flout copyright laws such as the TEACH Act. So what do faculty currently appear to know about their institutions policies regarding fair use and copyright, and are they aware of what is or is not permitted in the online environment?

MOTIVATION

The ethics of using copyrighted materials without properly obtaining permission from copyright owners causes potential litigious action, affecting faculty members and universities. This is especially true for online and Distance Education, as the laws affecting these areas of instruction are not necessarily known or, when known, understood. As the number of online classes increase, the potential for damages due to Intellectual Property Law violations increases. As a result, the authors were interested to find out to what extent faculty were aware of at least basic Intellectual Property issues.

PRIOR STUDIES

The authors conducted a review of the literature, and located three major studies pertinent to their investigation, and several other articles which were also related to this topic. One of the three major research studies was by Renner (2002), who presented the results of a study of post-secondary educator's copyright knowledge base and examined for the effect of various demographic factors. She found that generally, educators were unfamiliar with copyright law as it might pertain to online classes. The only two demographic variables which had an effect on the knowledge base were whether the respondent taught graduate courses and whether he or she was aware of their institution's copyright policy.

Another researcher in the Southern United States had noticed that, to date, research on university faculty knowledge of copyright and fair use had been largely hearsay. Sweeney, (2004) studied university faculty and their knowledge of U.S. Copyright and Fair Use guidelines as they applied to designing online materials. She reported that very few members of the faculty were aware of their institution's specific copyright and fair use policies. However, those faculty members who had had web design training, which was a small percentage, were aware of those policies. Sweeney's study pointed out there were three problems concerning faculty knowledge of copyright and fair use: (1) lack of training,

(2) desire to comply and (3) urgency in designing courses for a new semester.

Sweeney also noted from her research that Business college faculty achieved the highest level of copyright/fair use knowledge by scoring the greatest number of points. However, there was no statistically significant difference between the highest score (Business School) and the lowest score (Medical College). She examined for the effect of a number of demographic variables: gender, tenure, professional rank, department, number of sections taught online, years teaching, and formal training in web design or copyright. The only statistical difference found was for the gender variable, with female faculty having a slightly lower score than male faculty.

A third, tangentially related study was completed in which educational institutions in Canada who were heavily involved in distance education were asked to report on their copyright policies and functions as it pertained to distance education. Of the 17 leading online education providers contacted, 10 reported on their copyright functions and operations. "A 24-item questionnaire focusing on various features of copyright clearance was mounted on a Web page in 1998, and invitations to participate in the study were then sent to the institutions."[i] The responding institution identified five major copyright-related functions as being part of their institutional operations. The authors concluded by stating "systematic expansion of the functions of granting permission for faculty and institution-owned intellectual property, orientation and training on copyright, and advice and contributions to institutional policies on intellectual property will become even more necessary in the near future." (Ibid)

A fourth copyright-related study examined the perceived barriers to online instruction at Scottish institutions. The authors surveyed "Scottish further education academic staff regarding levels of usage of existing e-Learning environments" (Wallace). The researchers concluded that staff identified copyright to be a legal area which concerned them the most. "Copyright was the most frequent area of request for legal awareness training among

teaching practitioners." (Ibid) While Scottish copyright law is obviously different from copyright law in the United States, it is clear that this is a topic which spans more than one country, and which can cross boundaries, as institutions of higher education wrestle with the copyright issues and laws in their own and other countries.

A fifth study "investigated digital intellectual property issues in distance education, including … educational use of copyrighted online material." (DiRamio & Kops) The investigators concluded from their data analysis that the most alarming part of their findings was the general lack of awareness in higher educational institutions regarding digital copyright issues. "Our data suggests, for a majority of schools in the study, that both administrative planning and campus policy formulation have not kept pace with rapid advances in online teaching and learning."(Ibid) They discovered that even some college personnel normally considered campus experts in this area were confused by the issues surrounding distance education and copyright laws. They recommended that "a campus wide information effort be used as a vehicle to get the word out about digital copyright infringement, fair use, and the impact of TEACH". (Ibid)

METHODOLOGY

In order to investigate what faculty knew about current copyright law and their institution's policies regarding copyright, the authors queried accounting faculty using a structured, written questionnaire. The questionnaire was developed to determine what kinds of information faculty might need to be made aware of in order to stay abreast of the changes taking place in copyright law and fair use. Thirty accounting educators were queried at a professional meeting in the Southeast United States.

Data was analyzed using analysis of variance (ANOVA). This procedure was chosen as the authors initially wished to determine whether there was a relationship between the score achieved by faculty on a copyright and intellectual property quiz and the length of time teaching and experience. The authors were

unconcerned about the nature of the relationship at this point in the study of faculty and Intellectual property issues.

The questionnaire had three sections. Section one queried the respondents understanding of fair use and copyright. Section Two, was a group of four scenarios in which the respondents were to determine (1) who were joint authors, (2) in what situation does an employee acquire copyright, (3) what authority allows a faculty member to include someone else's work without permission, and (4) what libelous exposure does a faculty member have if they fails to follow their institution's guidelines concerning Fair Use of Copyrighted Materials. Section Three included questions regarding demographic information of the respondents and their awareness and experience with their institution's active promotion of compliance with copyright law. The authors decided to gather information using a structured questionnaire rather than a face-to-face interview in order give the respondents a greater feeling of anonymity and thereby get more accounting professors to agree to participate in the study.

Disadvantages of a Written Questionnaire

One disadvantage of a written questionnaire is the quality of the information obtained. This concern is broken down into response rate and the accuracy and completeness of responses to the questions.

Response Rate. This was a "captive" population attending an Accounting Educators' Conference and participation in the study was voluntary. Response rate for the Conference population was determined by having a sign-in sheet in the testing room. The names signing-in were cross checked with the roster of attendees. The authors' determined that every Conference attendee participated in the study.

Accuracy and Completeness of Responses. At the beginning of the testing period, the authors briefly the described the questionnaire and explained the motivation for the study. The

respondents were informed they could request a copy of the results if they left their email address after completing the survey. Of the people who filled out the survey instrument, eighty-seven percent left their email addresses. The authors used this as a surrogate for interest and assumed that the motivation to respond sincerely and completely was acceptable.

Structure of the Survey. The survey was comprised of ten multiple choice questions on copyright and fair use adapted from Renner (2002). As Renner pre-tested the survey questions, the current study adopts the position that the instrument used has been evaluated for any potential problems in question wording in respondents' comprehension, and in the question sequence.

The written questionnaire form did not force the respondent to answer the questions in a particular order, though it is assumed that the respondents answered the questions in the order written on the survey. However, this questionnaire was designed assuming the questions could be answered in any order.

Additionally, inherent in the typical written questionnaire is the difficulty of correcting any misunderstanding regarding the material as no questions were allowed during the administration of the instrument.

Results of the Survey

This study examined several factors, which included demographic variables and questions about a faculty member's perception of the importance of understanding copyright and intellectual property as it applied to their teaching. To this end, the authors queried the participants regarding whether or not they viewed it as their duty to understand copyright law in a variety of settings such as: (1) classroom applications, (2) their own publications, (3) online course development (4) distance learning, or (5) the library.

The authors were interested in the responses to the above named questions as a preliminary investigation in determining whether accounting faculty's responses could be seen as a

surrogate for the importance of ethical behavior in their professional lives.

The results of this categorical question were as follows: 70% or more of the respondents indicated it should understand copyright as it related to classroom applications, their own publications, online course development, the distance learning environment and the library. However, 90% also stated that it was not that important to understand copyright law in any of the above-named settings. This brings an interesting question to light. "Should not accounting faculty by the very nature of the accounting function be concerned with operating within applicable rules.(Cobb and Van Kampen 2007)

This study examined two demographic variables, *Length* and *Experience* as they relate to the percent correct on the Intellectual Property quiz. The variable *Length* referred to the length of time the respondent had been teaching in higher Education. The respondents had to indicate whether they had been in higher Education for a range of years. The ranges were grouped accordingly: Group #1 under ten years (9 respondents), Group #2 11 – 15 years (3 respondents) or Group #3 over 15 years (18 respondents). The variable *Experience* referred to the length of time a respondent had been using web-based/Internet technology for instruction. The respondents had to indicate whether they had less than one year; between 1 and 2, 3 and 4 years; or over five years of web-based experience.

ANOVA Assumptions. As previously discussed, ANOVA was chosen to determine whether there was a relationship between the quiz score achieve by survey respondents and the length of time they had been teaching or their experience using the internet for instructional purposes. While the researchers could theoretically have completed a series of *t*-tests, this would have increased the chances of a making a Type I error, something the

researchers wished to avoid. In addition, in order to better inform the final conclusion of this study, this study analyzed how well the study population met the ANOVA assumptions. A summarization of the discussion of the ANOVA assumptions can be found below at Table 1.

Dependent Variables: Length and Experience. The membership for a respondent in any of the levels of (1) length of time teaching or (2) years of online experience was not influenced by any other respondent's membership. Therefore, the assumption of independence of observations can be assumed for each of the variables, Length and Experience. The assumption of an approximation to normality can be assumed, "…with as few as 10 to 20 observations." (Bock) The second assumption, that the observations are normally distributed on the dependent variable in each group, presented some difficulty due to the fact that the study used Renner's questionnaire which has five level options for both variables Length and Experience and this pilot study had only 30 observations.

For the variable Length, this study assumed this assumption was met for Level #3 (N=18) and possibly Level #1 (N=9). However, Level #2 with only three respondents clearly violated the Bock heuristic. The variable Length was then collapsed into (1) 0 – 15 years, (2) over 15 years and (3) no experiences. For the variable Experience, the study originally had five levels: less than one, 1 – 2 years, 3-4 years, over 5 years and not use of web-based instruction. Only the over 5 year's level had ten or more observations. The levels were collapsed into three levels: 1 – 5 yrs of experience, 5 or more years of experience, and no online experience.

Kurtosis and skewness were then evaluated in order to further evaluate the distribution. The kurtosis statistic -1.950, for Length indicated a fairly platykurtic (flat) distribution. The skew statistic is -.430. This measures a distribution that is not too far

from normal with respect to symmetry round the mean. However, due to the small size of the population, the researchers were concerned about how to interpret the reliability of the data. Due to the kurtosis of the distribution, an estimate of standard error of kurtosis (sek) was calculated using the formula after Tabachnick & Fidell. (1996) S*ek* = equals the square root of 24/n or 24/30 which is .8944. Therefore, it was determined that the distribution had a significant kurtosis problem. The kurtosis statistic for Experience was -1.309, also indicating a flat distribution, although not as problematic as the Length. The measure of skewness was .315 with a standard error of .427, indicating scores were skewed positively skewed.

Homogeneity of Variance. The third assumption that population variances for the levels are equal was checked using the Levene Statistic. The Levene was significant at the .012 level for length, indicating that there is only a 1.2% risk of being wrong in rejecting the assumption of equal variances. Having set significance at .05 level, the study assumes that the assumption of homogeneity of variance has been violated. The Levene statistic for Experience was reported at a significance of .027. Therefore, the study faces the same difficulty in accepting that the assumption of homogeneity of variance has been met as with the Length variable.

Table One

Summary Evaluation of ANOVA Assumptions

	Independence	**Normal Distribution**	**Kurtosis**	**Skew**
Length-3 levels	assumed	assumed	platykurtic	somewhat negatively
Experience -3 levels	assumed	assumed	approaching mesokurtic	somewhat positively

ANOVA Results

The results of the ANOVA for three levels of Experience reported an F of 3.348, significant at the .05 level. Experience with online teaching appeared to have some effect on the percent correct achieved on the ten-question quiz. The results of the two levels of Length reported an F of 3.631, significant at .067. As the group size was small (N<20), and in order to compensate for resulting insufficient power, the researchers decided to increase the alpha level from .05 to .10 deeming this was appropriate, as suggested by Stevens (1996). While the researchers understand that the achieved level of significance was sufficient under Stevens criteria; the data indicated that the populations did not meet the ANOVA assumptions in a robust manner. Therefore, it is only with a moderate level of confidence that the study assumes that a faculty member's Length of time teaching online had some effect on their quiz score.

DISCUSSION

Quantitative data reported in this study supports the idea that faculty knowledge of fair use and copyright guidelines is limited. Few faculty appear to be aware of their own institutional policies. The following variables which seem to impact knowledge were: length of time a respondent had been teaching in higher education and how long they had been teaching online. The results of this study are similar to Sweeney (2004) and Renner (2002), as well as C. Sweeney found that unless the respondent had had web design or copyright training very few were aware of their own institution's policies unless they had formalized training. The "…highest score for correct answers was 35 of 88 possible points". If one translates the raw score to a percentage the highest percent correct was just under 40% (Sweeney 2004). Sweeney's respondents' score results were slightly lower than the results of

the current study, in which the highest score of any respondent was 64% correct.

Renner, on the other hand, studied 62 individuals with respect their knowledge of the law about the boundaries of copyright protection for facts and ideas. In her study, the respondents were also unfamiliar with the law as it pertained to the exclusive rights of copyright holders "The legal knowledge score of each participant was the raw score of items answered correctly out of 21 question items…Overall, the grand mean score for the group was 57%."

This correlates closely to the current research being reported in which the respondents scored 56% correct. This is especially interesting as this study used a significant portion of the Renner questionnaire. This study found a week effect for the variables Experience and Length. Renner, on the other hand, found no effect for those variables. Her study did find a significant effect for two demographic variables which were: (1) participants awareness concerning their institution policy copyright policy and (2) the level of courses taught in the institution. "Those who taught graduate course online scores lower than those who taught undergraduate and professional courses online (Renner 2002)."

The authors of the current study find this to be of interest as one would expect that the graduate level instructor would have more publications and therefore though personal experience have become more aware of and interested in intellectual property and copyright laws. This, of course, should lead such persons to seek out information regarding their institutional policies and their own intellectual property rights before assigning it to a publisher, internal or external.

The adherence to Copyright law and fair use guidelines have ethical implications. The researchers were interested to find a result for accounting faculty that pointed to a lack of concern with the importance of understanding these timely topics. However, in the light of Cobb and Pendarvis (2005) who reported that when comparing the results of their study on ranking the importance of a

list of study content areas with other studies examining the same issue, most of the other studies placed ethics near the bottom of each list.

CONCLUSIONS

Faculty appear to have limited knowledge regarding fair use and copyright, based on their responses to the questionnaire. The finding of this study strengthens the findings of Renner (2002), Sweeney (2004), Claerhout and Cookson (2000).

The level of knowledge exhibited in the current study concerning copyright laws and institutional policies regarding copyright is in line with what one would expect given the results of previous studies. Essentially, all faculty members who have taken a test measuring their knowledge of copyright failed to demonstrate an acceptable level of mastery of this subject and therefore did not have a passing score.

No fault is assigned to faculty, however, as copyright is a complex and ever-changing target. Additionally, institutions do not appear to have been successful in their efforts to educate their online faculty in these matters, even though they are now required by law to educate their faculty if the institution offers courses in the online environment. Faculty and institutions are leaving themselves open to litigation. According to Title 17, Chapter 5 § 504**,** (U.S. Copyright Office) **"**The copyright owner is entitled to recover the actual damages suffered by him or her as a result of the infringement, and any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages." Additionally, "the court in its discretion may increase the award of statutory damages to a sum of not more than $150,000." (Ibid). By extension, the researchers suggest that perhaps faculty are unaware of their own intellectual property rights with respect to courses developed for online delivery.

The two most critical components to resolving this situation are clear policies and better training. Having clear and coherent policies in highly visible locations in place for all staff and faculty to refer to when creating and updating online or Distance

Education courses and implementing faculty development courses which address copyright as a critical component in the training process will go a long way towards remedying the problem. A third potential solution is to also have a copyright clearing office for the faculty to turn to, rather than relying on faculty to obtain permission for every item they wish to use online. If an institution were to make it easier for faculty to obtain copyright permission, it is more likely that faculty would be willing to comply. Obtaining permission could be completed within house, or outsourced to licensing agencies, such as Copyright Clearinghouse, which reduces the time and labor required of faculty in securing copyright clearance. A copyright office would have "the responsibility, in coordination with instructors, authors, and editors, to obtain clearances for all paper and electronic course materials, including reprints of out-of-print texts, compilations of readings, audio- and video-recordings, and online text material" (Claerhout and Cookson). By reducing the workload required of faculty to obtain clearance, it is believed faculty would be less reluctant to follow the steps needed in order to be in compliance. Faculty might also be more willing to use supplementary readings and a wider variety of media for their courses if they believed they would not be held liable, as someone else would be obtaining the clearance.

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