

## Ethics and Copyright in Distance Education

### Scenario 1 - Music

Jill Boden is an undergraduate student in Dr. Bead's online class, "The History of Classical Music". The class is delivered asynchronously via Blackboard. They have been given an assignment to create a music e-portfolio with music from at least 3 great classical composers. Jill used music from classical composers Mozart, Tchaikovsky and Beethoven in her music e-portfolio. She copied the music from CDs which her father had purchased for his own entertainment. She chooses 1 song from each composer and plays each for 1 minute in her e-portfolio project. She did not modify the original works. Jill assumes that because the CDs were purchased by her father and the composers have been dead for over 70 years, she does not have to cite the composers work. Is Jill correct in her assumption?

**Purpose and Character:** Jill's use of the music of classical composers Mozart, Tchaikovsky and Beethoven is in a non-profit, educational setting, and can be considered fair use. The use of the work correlates with her class (i.e. The History of Classical Music) for educational purposes. In addition, she did not transform or modify the original work of the composers for her project.

**Nature of the Work:** The composers' music had been previously published and can be considered under fair use.

**Amount and Substantiality:** Jill uses a small portion of each composer's work (i.e. 1 minute each). In this case fair use is favored because it is not more than 10% of the whole work for each composer.

**Market Impact:** Jill's use of the music is for a school project and not for commercial use, and has no direct market impact. Therefore, it can be considered fair use.

**Outcome:** Fair Use. The music of these composers has been in the public domain for years and all composers have been dead for more than 70 years. However, music can be trickier to use when it comes to copyright laws. Therefore, Jill should err on the side of caution because there may still be copyrights assigned to the recording of the music on the CDs her father purchased. She should cite the works of the composers and the source of the music.

### Scenario 2 - eBooks

Bob Marble is a full time graduate student enrolled in 3 online classes that are delivered asynchronously via Blackboard. Bob's textbooks cost between \$100 and \$250 per class. One of Bob's friends told him that there is a website where he could download any textbook in e-Book form for free. Bob decides that since it is so expensive to purchase textbooks, that he would save some money by downloading his textbooks for free from this website, and use them for his online classes. Bob did not do any research to find out whether the website was legitimate, and there were no copyright or fair use notices on the website. Since his classes were online anyway, he did not see an issue with downloading e-Books for free. Based on copyright laws, is Bob's action acceptable?

**Purpose and Character:** Bob's use of the e-Books is for non-profit educational purposes (i.e. to be used in conjunction with his online classes). It is possible that this could be considered fair use.

**Nature of the Work:** The e-Books are actually textbooks which have been published and printed which are generally favored for fair use.

**Amount and Substantiality:** In this case, Bob is downloading the entire copyrighted e-Book(s), and fair use is not favored when large amounts of copyrighted materials are used.

**Market Impact:** There is potential market impact because the e-Book textbooks are being downloaded for free; copyright owner(s) will experience a drop in revenue from the share of students who are not purchasing the e-Books legally, but getting them from the website for free.

**Outcome:** By downloading the e-Books, Bob is illegally acquiring copyrighted textbooks without the express permission of the copyright owner(s). Fair use not favored.

### **Scenario 3 – Book Chapter**

Dr. Applegate is a professor who teaches Intermediate Statistics online via Blackboard at an accredited, non-profit institution of higher education. The textbook he assigned for the class - *Essentials of Statistics for the Behavioral Sciences* - was on back order in some of the major book stores and online. It was the start of the first week of classes and the majority of his students did not have the textbook. So Dr. Applegate made a copy of the first chapter of the book and posted it online in Blackboard for his students to access it. He also posted a note to students that copying and distributing the chapter outside of his class, is a breach of copyright laws. Blackboard access is protected and students need a login user ID and password to access it. Therefore, based on copyright laws, did Dr. Applegate do the right thing by copying a chapter from the textbook and posting it for students?

**Purpose and Character:** Dr. Applegate's use of a copy of the chapter in a non-profit educational setting can be considered fair use.

**Nature of the Work:** The textbook chapter can be considered as a factual work that has been published and printed. Therefore, this can be regarded under fair use.

**Amount and Substantiality:** The amount that Dr. Applegate copied was one chapter which is considered minimal from a textbook which has 16 chapters.

**Market Impact:** Dr. Applegate does not have any intent to replace the original work, and students still have to buy the textbook when it becomes available in stores and online. Therefore, it does not affect the potential market for the textbook.

**Outcome:** Fair Use. The textbook chapter is relevant to the class, and only students that are enrolled in the class have access to the textbook chapter. In addition, the professor provides a warning to students about copying and distributing this material outside of the class.

**Scenario 4 – Video**

Jenny Picasso is enrolled in an online Multimedia class which is delivered asynchronously via Blackboard. This is her last class before graduation. Her final project contained 2 video clips on multimedia design that she had found online, each playing for 1 minute. She does not make any modifications to the video clips. Her final multimedia production was posted on her website, and she received an “A” grade for it. She decided to use the multimedia production for her upcoming job interview, and excluded the copyright notice for the video clips she had found on the internet, claiming that they were in the public domain. Would Jenny’s exclusion of the copyright notice for the video clips, and use for a job interview be acceptable based on copyright laws?

**Purpose and Character:** Jenny’s main purpose for using the video clips is for her project in her online class which favors fair use because it is strictly non-profit, in an educational setting. She also does not transform or make modifications to the video clips. However, she does decide to use her project for an interview and this presents a grey area. But excluding the copyright notice for the video clips is unethical and will lead to copyright infringement.

**Nature of the Work:** The video clips were published on the internet and could be considered fair use. However, Jenny excluded the copyright notices from the video clips which is an illegal act and a copyright infringement.

**Amount and Substantiality:** Jenny uses a small portion of each video clip (i.e. 1 minute each). In this case fair use is favored because it is not more than 10% of the whole work for each video clip.

**Market Impact:** Jenny’s use of the video clips is for a school project and not for commercial use, and has no direct market impact. Therefore, it can be considered fair use

**Outcome:** This scenario could have possibly come under the fair use umbrella but Jenny made one crucial mistake – she excluded the copyright notices from the video clips she found on the internet which is an infringement of copyright laws. In addition, since both video clips had copyright notices, Jenny should have contacted the owners of the copyrighted material and asked for permission to use the material in her project. Fair use is not favored.

**Scenario 5 – Images**

Dr. Lee is a professor who teaches Art History asynchronously via Blackboard, at an accredited, non-profit institution of higher education. She decided to make a PowerPoint presentation out of a few graphic images she found and scanned into digital format, from various journals and magazines which the university subscribes to, on Art History. Her intent was to help students understand the different genres of art throughout various historical periods. She posts the presentation on Blackboard so that her students would have access to it. Is Dr. Lee infringing on copyright laws by using those images for her online presentation?

**Purpose and Character:** Dr. Lee’s use of the graphic images is non-profit and educational, and can be considered fair use.

**Nature of the Work:** Dr. Lee takes the graphic images from journals and magazines which the university subscribes to. These can be considered as factual work that has been published and printed, and therefore can be regarded under fair use.

**Amount and Substantiality:** The amount of images which Dr. Lee digitized was minimal and can be considered fair use.

**Market Impact:** Dr. Lee does not have any intent to replace the original images, only to make it useful for students to understand the material being taught. Therefore, there is no market impact and can be considered fair use.

**Outcome:** Fair Use. Dr. Lee can also credit the sources for the images and display copyright information for the original source for all images digitized in her presentation for students.

### **Scenario 6 – Audio**

Dr. Kirkpatrick is a professor who teaches via Blackboard, at an accredited, non-profit institution of higher education. He teaches Principles of Management Information Systems. There are two students who are legally blind in Dr. Kirkpatrick's online class. He was contacted by both students before the official start of the class, and provided with documentation of their disability. Since it is the policy of the university to make all materials accessible (i.e. Section 508 of the American Disabilities Act) to all students, Dr. Kirkpatrick has created an audio recording of one published book for use by the students who are legally blind. Is Dr. Kirkpatrick allowed to convert a published book to another media format?

**Purpose and Character:** Dr. Kirkpatrick's purpose for converting the published book to audio format is to make the material accessible to the two legally blind students. It is therefore non-profit and being used in an educational setting, and considered fair use.

**Nature of the Work:** The book that is converted to audio is a published and printed work. Therefore, this can be regarded under fair use.

**Amount and Substantiality:** Since Dr. Kirkpatrick is converting the whole book to audio format it is not likely to be considered fair use.

**Market Impact:** There is no market impact because Dr. Kirkpatrick is not using the audio recording of the book for commercial purposes. It is strictly to make the material being taught accessible to two students with disabilities.

**Outcome:** Although converting materials from one format to another is prohibited where copyright laws are concerned, according to Smaldino, Lowther, and Russell (2012), "the law permits the audio recording of books for use by students who are legally blind" (p. 15). It is still a good idea, however, for Dr. Kirkpatrick to seek permission from the copyright owner(s) to convert the book to audio format.

**References**

Smaldino, S. E., Lowther, D. L., & Russell, J. D. (2012) *Instructional Technology and Media for Learning* (10<sup>th</sup> ed.). Upper Saddle River, NJ: Prentice Hall.