

Social Media Use in Higher Education: Key Areas to Consider for Educators

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Abstract

The use of social media in higher education classrooms is on the rise as faculty employ a variety of software tools and free web applications to enhance learning, communication, and engagement. Web 2.0 social software exists beyond traditional course management systems and potentially opens up the academic environment to a public space. This article presents important issues for educators to consider as they use these new tools by investigating the ramifications of moving academic activities to a public sphere and examining how laws that govern our academic freedoms and behaviors translate in this new environment. The discussion focuses on concerns specific to incorporating the use of social media and user-generated content into the teaching and learning environment in higher education, touching on compliance with disability and privacy law, intellectual property rights, copyright law, and the fair use exemption providing practical advice with each area of consideration.

Keywords: user-generated content, intellectual property rights, copyright, ADA, FERPA, privacy, fair use

Introduction

With faculty using a variety of software tools and free web applications to enhance learning, communication, and engagement, the use of social media is on the rise in higher education classrooms. Emerging Web 2.0 social software exists beyond traditional course management systems and potentially opens up the academic environment to a public space. By using these tools, academic content, discussions, and other interactions no longer live in the safe, controlled world of academia but now become public - living on public servers, retrievable by public search engines, where most, if not all, are owned by for-profit and public companies.

Rather than debating or discussing in any depth pedagogical reasons for using social software tools for teaching, three important questions will be addressed: 1) What should educators know or consider as they employ these tools? 2) What are the ramifications of moving academic activities to the public sphere? 3) How do laws that govern our academic freedoms and behaviors apply in the online environment? The discussion that follows focuses on issues specific to incorporating social media and user-generated content into the teaching and learning environment in higher education, touching on compliance with the Americans with Disabilities Act (ADA) and the Family Educational Rights and Privacy Act (FERPA), intellectual property rights, copyright law, and the fair use exemption.

User-Generated Content (UGC), Social Media, and the Web 2.0 Revolution

The ubiquitous term “social media” has become inherently connected to the popular [YouTube](#), [Flickr](#), and [Facebook](#) websites. Describing media as “social” implies that it exists in a social space and/or users interact in some way with the media. Kaplan and Haenlein (2010) defined social media as “a group of Internet-based applications that build on the ideological and technological foundations of Web 2.0 and that allow the creation and exchange of user-generated content” (p.61).

User-generated content (UGC) is another term popularized by the possibilities of Web 2.0 applications, which no longer limit users to being passive consumers of content but enable them to become active

participants and even authors in a collaborative social environment. To be considered UGC, the creative content must be openly published and accessible and developed outside the commercial sphere (Kaplan & Haenlein, 2010). In this way users are developing content for the sake of the creation rather than as a consumable commodity (Halbert, 2009).

The term “Web 2.0” first appeared in 2004 to describe the transition of the World Wide Web from a broadcast to a participatory medium, recognizing the revolution taking place by the unprecedented and ongoing collaboration between software developers and end-users (Kaplan & Haenlein, 2010). This development, brought on by new and enhanced functionality, set the stage and created the infrastructure for social media to evolve (Kaplan & Haenlein, 2010). Web 2.0 structure and social networking applications allow users to produce more easily and widely share UGC. Thus, social media is the arena where users can “engage in the creation and development of content and gather online to share knowledge, information, and opinions using web-based applications and tools” (Grover & Stewart, 2010, p. 9).

Teaching with Social Media in Higher Education

The Web 2.0 revolution has certainly entered education, carrying with it the notion that users add value through their participation (Mason & Rennie, 2008). It has changed the web browsing culture from passive to participatory with easily-created user-generated content. This call to users to become content creators radically challenges the traditional authoritatively-driven teaching and learning model. When students actively participate in knowledge creation for themselves and their peers by employing the tools they use every day, they are changing the flow of information from “unidirectional to multidirectional,” (Grover & Stewart, 2010, p. 10-11) and defining a new Learning 2.0 paradigm. Lee and McLoughlin (2007) noted that this reality is one where teachers/educators relinquish some control to embrace the informal learner-centered pedagogies empowering twenty-first century learners; they went on to state, “these changes are inevitable and unavoidable, given the morphing nature of higher education.”

Using technology to accommodate students’ different learning styles is not novel. The strength of social media applications is that they offer an assortment of tools that learners can mix and match to best suit their individual learning styles and increase their academic success (Grover & Stewart, 2009). Further, such technologies are typically freely accessible, easy to incorporate, and have a minimal learning curve to master. Learning environments can become personalized, and faculty can enhance their pedagogical techniques by using tools to extend class engagement beyond designated class time and to increase the quality and quantity of participation in online courses (Grover & Stewart, 2009).

Some faculty members are still reluctant to use their campus learning management systems, and others are frustrated with the limitations and proprietary nature of such systems (Dalsgaard, 2006). The growth of courses, and even complete programs, being taught online has challenged educators to develop effective delivery methods that move beyond ‘read and click’ while enhancing the learning of all students. Advocates feel that the wide acceptance of social media sites outside the higher education arena establishes a congruity easily transferable to community building in e-learning, which has the potential to transform higher education as a whole (Hoffman, 2009). Hoffman (2009) also argued that case studies demonstrate “multiple benefits for using SNS [*social networking software*], including, retention, socialization, collaborative learning, student engagement, sense of control and ownership” (p.3), along with a list of other perks for students and instructors.

Use of Social Media in Higher Education Literature

There have been many anecdotal articles published in the last eight to ten years on the use of social media and the incorporation of UGC in both K-12 and higher education classrooms. More recently, in-depth theoretical discussions and research results from case studies and experimental studies have appeared.

Arguments and Examples Supporting Use

Alexander (2006) introduced a variety of social media tools and explains how they could be used in higher education classes. Yet, he also challenged the community to look at how higher education faculty currently put forward “a complex, contradictory mix of openness and restriction, public engagement and cloistering” (p. 42). Duffy and Bruns (2006) detailed the possibilities for using social software tools such as blogs, wikis, and RSS feeds in educational settings, stating that our new ‘social’ and ‘mobile’ reality of

delivering educational content to students must match what they will encounter after graduation. They suggested that educational institutions have an obligation to their students to best prepare them for the future by fostering their collaborative communication competencies (Duffy & Bruns, 2006).

Richardson (2006) examined teacher-specific implementations of web tools to inspire deep student learning and active participation in the knowledge that makes up the web. His discussion connects these real examples to the pedagogy they support, emphasizing the shifts now happening in education toward mastering new competencies. These examples include use of open educational content, meaningful knowledge constructions, and the 24/7 learning environment, among others. Mason and Rennie (2008) advanced the idea that the core element of social networking sites, i.e the incorporation of UGC, has “potentially profound implications for education” (p. 4) because it permits course design to add value and empower learners. Yet, they warn that new technologies should not lead the design of activities but only be utilized to support educational outcomes.

Pedagogy and Usefulness

Enough experimentation has taken place in the classroom that studies have now been published investigating pedagogy and actual usefulness of Web 2.0 tools, including some discussions of outcomes (Grover & Stewart, 2010; Mason & Rennie, 2008). For example, Wheeler, Yeomans, and Wheeler (2008) evaluated collaborative learning by students who use a wiki to create user-generated content for their learning experience. Despite students’ hesitation to create work in a public setting, or to work as a group and the limitations of evaluating individual contributions, they still felt the tool held great potential to transform education. They emphasized that the primary benefit of using the tool is for collaboration or extending engagement outside the classroom and advised teachers to act only as facilitators or moderators in this environment.

Aijan and Hartshorne (2008) examined faculty adoption of Web 2.0 applications by investigating faculty members’ knowledge and perceptions of the tools. They also considered actual use factors that influence adoption. Their literature review presented a discussion of pedagogy while highlighting some of the tools’ advantages. Results indicated that while a majority of faculty members were aware of the pedagogical benefits these tools can offer, a disconnect occurs when it comes to actual adoption or future plans to incorporate them into their teaching. They determined that faculty attitudes strongly predicted whether or not they actually adopted a new method. Their recommendations called on administrators to promote the use of new social software, emphasizing their gradual learning curve and congruity with current practices. Further, they suggest that efforts should be made to build educators’ overall confidence and comfort with new technologies (Aijan & Hartshorne, 2008).

In search of actual empirical data from student and faculty use of social technology, Hemmi, Bayne, and Land (2009) conducted in-depth case studies of three different classroom use occurrences, exploring from a pedagogical perspective how higher education has been implementing these technologies. They concluded that faculty and students are approaching new tools and methods with some caution. They attributed this to the inherent slow-to-adopt-change nature of academia and its unwillingness to stray from the traditional models. Despite this, the researchers were encouraged that higher education institutions have begun to recognize social media’s immense possibilities (Hemmi et al., 2009).

Junco, Heiberger, and Loken (2010) conducted an experimental study to determine how the use of a specific tool, [Twitter](#), has impacted student engagement and affected student grades. Twitter was used to extend discussion beyond the classroom by having students participate in panel discussions, submit reactions to readings and their service work observations. Along with their posts they were to react to other students’ tweets. The researchers used two student groups, a control group who didn’t use Twitter and an experimental group that received training and had assignments that required them to use the tool. Their data demonstrate that students using Twitter “had a significantly greater increase in engagement than the control group, as well as higher semester grade point averages” (p. 1). The researchers strongly feel these results are evidence to support the educational usefulness of the tool and social media as a means to reach higher educational outcomes.

The many chapters of *Cutting-Edge Social Media Approaches to Business Education* (2010) are authored by various educators who detail their experiences with using [Facebook](#), [Second Life](#), [Twitter](#) and other common social media sites in their teaching. Several authors investigate learning styles and the connection between pedagogy and tool-specific advantages. Wankel (2010), the editor, argues the case

in the first chapter that business students will be expected by future employers to be proficient with new cutting edge technologies for business communication. Individuals displaying these proficiencies are certain to have advantages over students who haven't had opportunities to develop these skills. This echoes the findings of Duffy and Bruns (2006).

The European Commission, interested in promoting innovation in higher education, has funded a three year [iCamp](#) research project which "investigated how Web 2.0 technologies can be implemented in higher education settings." (n.d., p. 6). This has resulted in the free published handbook, [How to Use Social Software in Higher Education](#). The handbook is aimed at educators who are interested in incorporating social software into the learning process. It takes a constructivist pedagogical approach offering information about teaching styles and different software tools connected to the learning activities they support. The iCamp Project foresees that use of these tools can transform learning in higher education.

These studies are just a few from the burgeoning discussion taking place in academia, a discussion which has begun to examine this new paradigm with increased scrutiny and formality. While most of this literature considers the use of social media in education from a theoretical or educational pedagogical view, the remainder of this article will provide practical guidance for faculty interested in incorporating social media tools in general, and user-generated content more specifically, into their teaching. This is a chance to pause and consider some of the implications that arise when moving academic activities to the public sphere.

Key Areas of Consideration for Educators

The numerous books and articles that have already been published by enthusiasts detailing how social media and UGC can be used in classrooms are primarily written by education reform advocates and early adopters. These authors share realistic examples while trying to demonstrate how these new tools can transform teaching, learning and education as a whole (Duffy & Bruns, 2006; Alexander, 2006; Richardson, 2006; Junco, Heiberger & Loken, 2010). Missing from this dialogue, however, is discussion of how best to tackle some of the practical, less paradigm-shifting questions about ownership, privacy and security, access, accessibility and compliance, stability of technology, intellectual property rights, and copyright law.

Ownership and Intellectual Property

A discussion of ownership in academia is synonymous with addressing intellectual property (IP), a term that has become increasingly common in the popular media. The question really is one of ownership and rights: who owns not only the tangible item that is created, but the intellectual concepts, ideas or processes behind the creative work or property? Dictionary definitions refer to concepts of property rights that extend to ideas, inventions or processes--that is, creative works of the mind that may not have any tangible physical form (OED, 2010).

The examination of IP rights in the "real" world, however, is rapidly becoming a challenging and active legal area. In higher education IP is usually handled with specific policies, often negotiated and connected to bargaining contracts that determine who owns the work that gets created by faculty and staff and which detail agreements regarding inventions that can be trademarked. Student ownership, on the other hand, occupies a gray area. There is no standard way of addressing the intellectual property rights of student work. Many universities assume ownership of student-generated work, usually those research projects that are co-sponsored by faculty and are primarily created using university resources.

Before there was the ability to digitally create and collaborate or share work over the Internet, the ownership and use of another's copyrighted creation was pretty straightforward. An example of the growing uncertainty is the controversy about the plagiarism detection software Turnitin, which has been challenged by many student advocates as a breach of their copyrights. These objections escalated into at least one lawsuit that has since sparked discussions across campuses about students' rights and, in some cases, influenced institutions' decisions to end the use of these services altogether (Foster, 2002; Parry, 2009). Increasingly, universities are respecting students' IP rights, mainly by recognizing them as copyright holders of the work they create. When using social media tools in the classroom, the strict definition of original author or owner is blurred. For example, who owns the IP rights to a class-created wiki or blog, or the items developed for an island in Second Life? As faculty members recognize the possibilities of using these Web 2.0 tools to engage students, they are becoming co-authors/creators

alongside their students. Students begin to see these creations as portfolio work, and desire some ownership of what they've created. Further complicating the ownership question is the fact that these new creations are often hosted on servers and services owned by for-profit companies. Most users of these services are not aware that the providers of these free tools may claim ownership of the work created and residing on their servers. What is perhaps the most well-known controversy of this nature arose in 2009 when Facebook changed its terms of service agreement with its users, granting itself the rights to use photos, posts and content that users make available on the system in any way it desires--even in cases where users have terminated their accounts. Facebook's explanation was that this change was necessary to maintain cohesion and system functionality, but the public perception was that Facebook was staking claim to users' copyrighted materials. The outcry was so great that Facebook returned to their original policy (Stone & Stelter, 2009; McCarthy, 2009).

The virtual world of [Second Life](#) (SL) presents an even more complicated IP rights conundrum. Users in SL are content creators, constructing everything from basic avatars and clothing to buildings and even islands. The terms of service agreement states that Linden Lab, the owners of SL:

"retains ownership of the account and related data, regardless of intellectual property rights you may have in content you create or otherwise own. You agree that even though you may retain certain copyright or other intellectual property rights with respect to Content you create while using the Service, you do not own the account you use to access the Service, nor do you own any data Linden Lab stores on Linden Lab servers (including without limitation any data representing or embodying any or all of your Content)" (Terms of Service, <http://secondlife.com/corporate/tos.php>).

While faculty members may understand that having access to another's work does not make them owners or give them rights to freely use the content as they wish, this concept may not be so clear for students. Recognizing the ease with which digital content can be copied, remixed, and reused, it is wise to facilitate discussions or assign readings about ownership and attribution, addressing ethical and legal content use.

Groups of users employing services and tools that involve the development of public spaces or objects are propelling the discussion of ownership, or lack thereof, to the creative content. Intellectual property rights and ownership questions are at the center of a complex web, overlapped by issues encompassing the use of copyrighted materials. Stuck in this web are other important concerns that must be considered such as matters of privacy rights; the Family Educational Rights and Privacy Act (FERPA); security; accessibility; access; compliance with the Americans with Disabilities Act (ADA); and the longevity and stability of these tools and services.

Privacy (FERPA) and Security

Institutions of higher education and teaching faculty have been dealing with FERPA since it was enacted in 1974. Many exceptions and amendments have been added over the years to address a wide variety of situations where personal information or data can or cannot be released (U.S. Department of Education, 2004). Traditionally, faculty only considered their obligations under FERPA when dealing with disclosure of student grades and the handling of personal information. However, when digital communication started to replace analog methods, clarification had to be made about how faculty could even transmit this information (much of this concern has been handled by securing institutional records systems and prohibiting the transmission of grades via email). Most universities include summaries of FERPA in their student and faculty handbooks and have data security policies that outline employee obligations and restrictions.

Even though social media tools being used do not collect enough personally identifiable data to threaten FERPA laws in most cases, the issue of student privacy in the broader context is still one that should be strongly considered. There was once a time when events that happened in a classroom were ephemeral and intangible, restricted to only the participants present and the extent that their memory would retain them. Using mediated tools that capture discussions and activities in an open public space fixes these events for digital perpetuity and makes them potentially available to a world audience. Stories about students posting images and comments on Facebook that have later come back to haunt them when looking for a job, or employees being let go because of comments made in what they thought was a private space, have made media headlines in the past few years. Even if class-created content is later

deleted by the faculty member or kept restricted to only the class participants, content and comments created online can be stored and archived by anyone with access, which creates the potential for them to resurface later. Will this public learning space inhibit risk-taking and instead foster a reluctance to share ideas with a broader audience for fear that these things will come back to haunt the student later? Faculty should consider not only having a discussion about online privacy but also include a statement in their syllabus about proper conduct and expectations for both students and faculty.

Another twist to the privacy concern is what the hosting sites do with the data they collect on their users. Should faculty ask or require students to use public systems that gather preference data on users, which the sites then sell to other companies as valuable targeted marketing data? Facebook has repeatedly made news headlines about privacy issues and access to user profiles. Lately, the concern has been third party applications misusing information without users even knowing that their information is being made available (Young, 2008). But perhaps this new Google-infused culture renders the privacy issue moot, as Google appears to be the search engine of choice and has long been mining user emails and search histories without widespread dissent. If nothing else, faculty can use these issues as teaching topics that aim to enhance students' media literacy.

Using social media in classroom activities moves discussions and interactions that were once private, happening in a secure classroom, into a public space where potentially the entire connected world can bear witness. Common sense would dictate that even when an online space is restricted to a specific classroom, it is never wise to publicly discuss student grades or put forth any critical review or feedback of an individual student's performance.

Access, Accessibility and Compliance

In the area of access, faculty members need to consider a chosen medium's ability to accommodate students' diverse learning needs, which include accessibility as defined by the Americans with Disabilities Act (ADA). The rights of students with disabilities at the university level are also protected under the Vocational Rehabilitation Act of 1973 (United States Department of Education (2004) and the Americans with Disabilities Act of 1990 (U.S. Department of Justice (2009). University faculty members are most familiar with the reasonable accommodation requirement or "appropriate academic adjustment," as stated in section 504 subpart E of the Disabilities Act (Jarrow, 1997). It is notable that the law does not go into detail as to what is considered "reasonable," leaving this up for interpretation.

Again, in an analog world addressing these concerns was much less complicated. Today, with the prevalence of electronic course management systems, library databases and institutional data systems, ensuring that necessary materials are actually useable and available to every student has become more challenging. Fortunately, the availability of assistive technology tools to enhance accessibility for a wide range of challenges and disabilities seems to have increased. For instance, screen readers are no longer expensive software systems relegated to a few computers in the university library. What's more, free applications that read screen text aloud are now available.

Online social media sites create an even more challenging environment as they are rich in media, images, and links facilitating complex interactions that use scripting languages not compatible with accessibility software, such as typical screen readers. In a survey of the five most popular social media sites (Facebook, MySpace, YouTube, Yahoo, and Bebo), [Ability Net](#), a UK disability charity, found "that, in contrast to their apparent universal appeal, they are effectively 'locking out' disabled visitors, the majority of whom can't even register, let alone participate in the on-line communities they wish to join" (AbilityNet, 2008). Even just creating an account was found to be nearly impossible as the widely used CAPTCHA image technology (Completely Automated Public Turing Test to Tell Computers and Humans Apart) is inaccessible to visually impaired, dyslexic, and many others with learning disabilities. Most users have encountered it as the visual verification code of slanted and distorted letters that they must decipher before proceeding with a task. While newer versions of spam software are now employing audio in attempt to address this dilemma, access issues remain.

The National Federation of the Blind recently filed a federal complaint against Pennsylvania State University on behalf of the blind and visually impaired citing "pervasive and ongoing discrimination" (Parry, 2010), claiming that the omnipresent use of technology on campus creates a "misery for blind students trying to go about basic academic business". This complaint is the first of its kind in that it's not targeting a specific technology as did the Arizona State University-Kindle case. This grievance was filed

in 2009 by the National Federation of the Blind and the American Council of the Blind against the university for distributing electronic textbooks that were not accessible to visually impaired users (Beja, 2009). The complaint against Pennsylvania State University is lodged at systems used by the entire university: its department websites, course management system, and even the library.

Universities already go to great measures to be inclusive and equitable. Faculty and staff are typically the ones carrying out policies and communicating needs. So far, fringe use of new social media tools may not have reached a level of saturation to be included in large scale lawsuits; however, faculty need to be diligent and thoughtful about accessibility and compliance issues when looking to incorporate new and exciting teaching methods.

Stability of Technology

The stability of the technology and the systems professors use for teaching and research is often taken for granted. Unless there is an outage, accessing the network from anywhere, using technology in the classroom, or teaching with a course management system (CMS) are usually effortless tasks that happen repeatedly throughout the day without much thought. However, if the network goes down in the middle of a lecture or files that were uploaded to the CMS disappear or are somehow corrupted, the reliability and stability of these systems quickly become an issue.

Campus systems need to establish support mechanisms: there should always be someone to call, be it the university technology services department or the technology help desk. However, when faculty members use off-site, in-the-cloud software, the reliability and stability of these systems are all outside the traditional support structure. New start-up companies (and even some well-established ones) can disappear overnight, can be bought by competitors, or change their use agreements without notice, all of which jeopardize the users' content.

The most common stability issue for technology is likely the removal of content by the software web host or system provider because of a [Digital Millennium Copyright Act](#) (DMCA) take-down request wherein copyright holders can initiate removal of material they consider to be infringing upon their copyright. The web host has a limited time to respond to the request, so typically it will remove the content without investigating the complaint and then send a notice to the user who posted the content, notifying him/her of the removal. Users can challenge the removal, but it takes time and creates a lot of hassle for users who need to access their content for a specific time period. The Recording Industry Association of America (RIAA) uses the DMCA take down provision regularly to control the use and remix of their copyrighted works; most users just comply even if they feel their use of the music was fair, fearing the wrath of this industry Goliath. A growing backlash has been getting more attention, fueled by the perceived abusive use of take down notices being exploited by those who want to control speech, protect their online reputation--or worse, limit access to important research and information (Electronic Frontier Foundation, 2003). Over the past few years, the [Electronic Frontier Foundation](#) (EFF) has begun challenging the blatant overuse and even misuse of the take down provision by filing lawsuits in support of affected users (EFF, 2007). With social media exploding exponentially, these challenges to the thirteen-year-old DMCA law are certain to continue.

Technological stability may not be a large concern for faculty, since their use of systems is often limited to a fixed time period, such as specific semester. Nonetheless, of the issues raised by DMCA take down provision, specifically intellectual property right and copyright ownership are often the most confusing for faculty.

Intellectual Property Rights (meets) Copyright law

Social media by its very nature uses other peoples' content, as many of the new web software tools are based on the idea of mashups. Mashups utilize user-generated content and available media or data to create derivative works or supply enriched digital content ([Wikipedia.org, March 9, 2011](#)). An example of this would be the BBC news website incorporating Google maps data to enhance their news coverage.

Digital technologies and new ways to use and reuse content are challenging society's notion of intellectual property and what is a fair use of someone's copyrighted work. Probably the first blockbuster case involved the music site Napster, whose service was ultimately shut down (Green, 2001). But that case was only the beginning of the revolution brought on by digital media and users' desire to change the paradigm of control. Napster and other similar file sharing services' weakness is that they simply shared

original, copyrighted files without adding, transforming, commenting upon, or in some way enriching them, as is the idea of mashups. These user creations can exist, knowingly or not, because of the fair use exception found in the copyright act and because, at the moment, there is no legal precedent to stop them.

Understanding Copyright Law Limitations and Fair Use

Title 17 of the United States Copyright Act protects authors' rights to their original expression by providing them an exclusive license, for a limited time (though not so limited any more), to do the following: reproduce copies of the work, publicly distribute or transmit copies, publicly perform the work, publicly display the work, and create derivative works based on the original work. Copyright protection cannot be applied to facts, ideas, processes or procedures, concepts, principles, system or methods of operation, nor discoveries.

The intent of copyright law is twofold: to protect the rights of authors/creators for a limited time and to promote the public good by allowing for use of these creations. Therefore, built into copyright law were some limitations: it does not control private uses, readings, and performances (section 110); it is limited by the right of first sale (section 109), thereby allowing reselling of books; and it contains a fair use provision (section 107). Fair Use is a "judicially created equitable rule of reason" (Oakley, 1990, section G, 1, para. 1), a provision of copyright law that permits individuals to use portions of copyrighted works without obtaining permission. The doctrine includes an non-exhaustive list of uses that could qualify as fair, such as works that are transformative, derivative, works of parody, commentary, and educational (which includes teaching, scholarship, and research). Rather than listing exact limits of fair use, copyright law provides four factors for determining a fair use exemption: the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; the nature of the copyrighted work; the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and the effect of the use on the potential market for or value of the copyrighted work. The four factors are weighed against each other; no one factor is determinative in every case.

Often universities, particularly their libraries, develop some version of a checklist or quota system for determining if a use of copyrighted material qualifies as fair. These are attempts to assist faculty and librarians in their fair use decisions, but these checklists typically oversimplify the analysis and over-restrict use by placing false quotas on amounts. Using one chapter of a thirty chapter book is not the same as one chapter of a four chapter book. Overuse of these quotas by university libraries has contributed to the eroding of fair use along with a propensity to avoid any risk and accept the increasing demand to pay for every use for fear of a lawsuit.

Educators are typically familiar with copyright law through the fair use exception that allows use of copyrighted materials in the classroom. Most higher education faculty have some comfort level with interpreting fair use for their classroom activities but are challenged by how to translate this use into their online classrooms and our new digital online society. Course management systems have placed the power in the hands of faculty to upload, link, and stream pretty much anything they wish to include in their lessons. If being in a university-sponsored password protected online space that is limited to only the current class has created a fictitious safety net for using copyrighted materials, taking this class out into the open web--a public space available for the world to view--should spark some serious contemplation.

Digital technologies have challenged some very basic definitions that we considered axiomatic for a long time. For instance, the idea of 'copies' is difficult in the digital age. When someone shared a copy of a book in the analog world, the original owner no longer had the book, or if she/he did, the copy that was shared was greatly inferior. Today when a digital file of a book is shared, both people have perfect copies, and when one person forwards that item to a group of friends, now any recipient of that transaction also has a perfect copy. So this simple act not only challenges the notion of copies (first exclusive protection) but also the concept of distribution (second exclusive protection). Consider when a mother innocently posts a video of her child singing along to a famous pop singer's song on YouTube. One may interpret this as performing, transmitting, broadcasting or even displaying a copyrighted work (fourth and fifth exclusive protection) as argued by the Universal Music Corp and the artist Prince against Stephanie Lenz (Citizen Media Law Project, 2007). Social media and remixing of creative expressions inherently challenges the third exclusive right of creating derivative works based on the original. All of these activities can take place daily in a modern classroom that incorporates new media tools.

Pushback and Guidelines

Many industry giants and big business are trying to secure their intellectual property; essentially, claiming that fair use does not apply to digital content or the Internet-connected social Web 2.0 universe. A growing movement of user watchdog groups, educators, librarians, researcher, scholars, artists, and new technology innovators are adamantly arguing to the contrary.

One such result of this pushback was the founding of the Creative Commons (CC) community, a 501(c)(3) tax-exempt charitable corporation founded in 2001 with support from the Center for the Study of the Public Domain at Duke Law School. According to its mission, CC “develops, supports, and stewards legal and technical infrastructure that maximizes digital creativity, sharing, and innovation” (<http://creativecommons.org/about>). Its members work to achieve this through the development of the Creative Commons licenses. These sets of [licenses and tools](#) supply a means for copyright owners to choose the type of use they would like to allow for their work, while at the same time providing users with content free of copyright restrictions; thus, empowering all groups.

Guidelines for Use

In line with the Creative Commons movement has been the development of Best Practice Codes. These codes, developed by different factions of users, interpret fair use and establish specific “best practices” for the use of copyrighted material for their discipline or communities. The Center for Social Media at American University’s School of Communication, in partnership with Washington College of Law, has spearheaded the development of fair use educational tools and best practice codes for a growing number of communities. These codes are now being recognized as ‘industry’ standards, such as the [Code of Best Practices for Fair Use in OpenCourseWare](#), for [Media Literary Education](#), for [Online Video](#), for [Documentary Filmmakers](#), for [Scholarly Research in Communication](#) (Center for Social Media, 2011). These best practice codes set precedent for exercising fair use as an “affirmative right that allows copying in specific circumstances versus merely a defense used in cases of copyright infringement” (Davis, 2002, p. 5). Doing otherwise empowers IP rights’ holders and copyright owners and the restrictive technologies they employ to personally censor creativity and removes fair use as an option altogether (Davis, 2002).

Fair use can still be applied in the digital world. In many cases the use or reference to another’s creative work by one author/creator can bring unexpected attention and interest to work that otherwise may have remained forgotten or anonymous. New technologies and social media in some ways make it easier to provide attribution to the original works that inspired the new creations. Students begrudgingly learn that they need to cite their sources when writing papers. Faculty need to extend discussions of ethical information use in all forms of scholarly endeavors including media and creative compositions, stressing the concept that just because something is legal, doesn’t make it ethical. Simple steps, such as always acknowledging sources of content, linking borrowed information and ideas, or creating credit pages can be made part of the requirements for an assignment. If use is substantial enough, but still within the fair use exception, it is always good ethical practice to extend courtesy to the original creator by seeking permission with a request that details how the work is being remixed. This is especially true if students plan to retain the work for their portfolios and will be ‘publishing’ them in some way for potential employers to view. It’s important for students to remember that posting work to the Internet or even a course management system can be considered publishing and distributing.

Many groups have joined together in challenging the evasive permission culture (Lessig, 2004) in defense of fair use and the ability to retain access to cultural objects not just for educational purposes but continuing our tradition of “free culture— not free as in free beer but free as in free speech, free markets, free trade, free enterprise, free will, free elections. A free culture supports and protects creators and innovators” (Lessig, 2004, preface xiv).

Conclusion

Faculty are embracing the use of new and innovative technologies, but this time the technological change isn’t arriving as carefully planned and sanctioned institutional initiatives but more as a grassroots movement. Adventurous educators see how the new communication and networking tools used by the masses can be adapted and utilized for teaching purposes. The free, easy-to-use social media that has now permeated so much of daily life brings with it the opportunity to enhance learning, participation, communication, and engagement; to extend the classroom experience; and/or to enrich the online

classroom. Professors incorporating these tools into their instruction can build their confidence with employing technology. At the same time, students are encouraged to be active participants in teaching and in their learning which creates a more engaging environment for all constitutes.

Choosing to use social media software and integrate UGC with the intention of enhancing engagement, interaction, and excitement is a very worthwhile effort but one should ensure that the trade-offs are equitable and ethical. Some suggest that these tools have relevance for implementation at all levels of education; they argue that such action “will better prepare students for a slew of new illiteracies and competencies in their post-education lives.” (Richardson, 2006, p 5).

Faculty can benefit from sharing experiences with colleagues and developing assignments that engage students in thoughtful discussions of new media’s challenges relating to privacy, ownership of intellectual property, and use of copyrighted materials which are teaching topics that can enhance students’ media literacy. Ultimately, the goal of teaching is learning and knowledge creation. If our society is at the point of what Thomas Friedman has described as “connecting all the knowledge pools in the world together” (2005, p269), then is it imperative that not only our students but also our faculty are competent knowledge consumers (Richardson, 2006).

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