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A Heuristic Approach to Creating Technological Fair Use Guidelines in Higher Education

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A Heuristic Approach to Creating Technological Fair Use
Guidelines in Higher Education

by

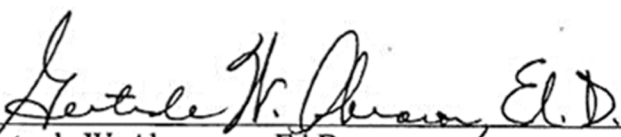
Jerry Roper

A dissertation proposal submitted in partial fulfillment of the requirements
for the degree of Doctor of Philosophy
in
Computing Technology in Education

Graduate School of Engineering and Computing
Nova Southeastern University

2017

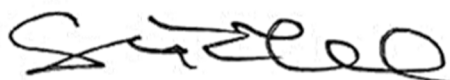
We hereby certify that this dissertation, submitted by Jerry Roper, conforms to acceptable standards and is fully adequate in scope and quality to fulfill the dissertation requirements for the degree of Doctor of Philosophy.


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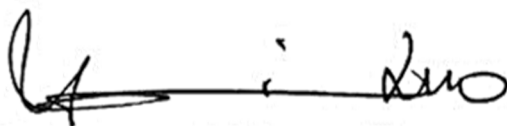

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An Abstract of a Dissertation Proposal Submitted to Nova Southeastern University in
Partial Fulfillment of the Requirements for the Degree of Doctor of Philosophy

A Heuristic Approach to Creating Technological Fair Use Guidelines in Higher Education

by
Jerry Roper
September 2017

Higher education has experienced challenges defining and implementing copyright compliance. Confusion among faculty and staff appears to be common regarding copyright and fair use. The original copyright doctrine was drafted over 200 years ago, which predates practically all technological advances that have and will continue to occur. Change is slow and onerous with most legislation; there is not much possibility the small amendments made to the law will be able to keep pace with the continual technological evolution. Further, judges are citing precedents in court rulings of copyright disputes that were made using the best interpretation of the law, even though those earlier adjudicators had nothing concrete upon which to base decisions.

The cycle of loose interpretations further exacerbates the copyright and fair use problem involving technology. Moreover, this concern has been magnified due to the digital nature of lesson delivery most learning institutions are adopting today. The rapid, widespread move toward online learning methods creates an entire set of copyright and fair use circumstances that extend beyond the traditional, face-to-face pedagogical issues. Invariably, schools will be left to attempt to decide what will be considered legal and safe, often by trial and error, until clearer, universally accepted guidelines can be created.

A group consensus for best practice was achieved over three rounds of surveying with the help of a Delphi panel highly experienced in copyright laws. Opinions converged early during the process, where proper fair use assessment was one of the major themes appearing during the first round. Respondents also agreed future educators will undoubtedly continue to struggle with fully understanding the intricacies of fair use. An overall consensus reached for many questions was sufficient for answering the proposed research questions and drafting a list of recommendations for technological fair use.

The outcome should add to the existing knowledge base, given the limited number of studies that have been conducted regarding the complexities of copyright topics in distance and online education. Recommendations for further investigations encourages researchers to continue where this effort ends to remain current and compliant with the ubiquitous changes in technologies.

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First, I would like to give thanks to my savior and creator. It was by the grace and mercy of God I was able to endure such a challenge. Thank you, Drs. Abramson, Terrell, and Round, for your patience and help with guiding me in the right direction. Dr. Abramson, you have influenced me in so many ways, and I truly believe I have grown as an educator and mentor just by following your examples. Amazing professors have always been the driving force throughout my educational career, and you all have fueled the fire for my continuing academic efforts.

I also need to acknowledge the other faculty and staff at NSU who offered inspiration and support. Likewise, I **greatly** appreciate all the participants who selflessly committed their time and efforts to this project. There is no final product without them. Family and close friends played a monumental role in keeping me encouraged throughout this journey, so did the relationship of my classmates.

My struggles and challenges have not been unlike those of the people before me who have pursued this degree. Somehow, I still managed to continue working toward this goal despite the obstacles and major life changes I encountered along the way. Last summer I experienced the loss of my sister and mom within a few months apart, 2,500 miles away. Mom has always been very proud and encouraging, and my sister was very supportive, so I dedicate this accomplishment in their honor. I know neither would have ever allowed me to give up. May you both have eternal peace and rest.

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Chapter 1

Introduction

The topic of copyright tends to be inherently complicated and from the legal standpoint; this matter provokes a great deal of controversy (Goold, 2015; Koutropoulos & Zaharias, 2015; Von Hoene, 2015). Many have experienced how costly it can be for those found guilty of violating this law, regardless of the industry (Baughman, 2012; Enghagen, 2014). Additionally, organizations that have spent years building a distinguished trademark risk having reputations tarnished.

Copyright law was originally created to protect the rights of authors and artists; however, the legislation has not been evolving as quickly as the changes in all current technologies (Aaron & Roche, 2015; Minnock, 2014). For example, today the Internet is an even more popular platform for education professionals, as learners can now be reached on a global scale. Crews (2011) declares the digitization of resources for use over the Internet has been the center of debate because lawmakers never clearly defined access and ownership rights for this medium.

Context

Legislation relating to copyright and intellectual property is still a valid concern for all learning institutions, whether the lesson content is delivered in a traditional classroom, online, or blended setting (Aaron & Roche, 2015; McPherson & Bacow, 2015; Porter, 2013). The rapid transformations in lesson creation and delivery methods have positioned educators to practice at more advanced levels than in the past, but Nenyh (2011) believes the various online learning tools used by the instructors and

students are still generating uncertainty and confusion. The specific details for use of the technology in the classroom are often left to individual interpretation (Aaron & Roche, 2015; Nenych, 2011).

Wang (2013) and Goold (2015) state copyright complaints in the United States are typically categorized under either civil or common law. Technology fair usage is usually determined case-by-case because the United States primarily practices common law or case law in the form of published judicial opinions. International copyright rules therefore are a source for misunderstanding as college faculty target learners worldwide in online courses (Crews, 2011; Goold, 2015).

Technology fair use is not only vague and problematic, it is also not mentioned anywhere in the original copyright doctrine even though Congress expected the growth of new technologies (Lee, 2010; Van Hoene, 2015). Arbitrations for cases involving ownership where technology is involved have been more complicated compared to printed materials. Aaron and Roche (2015) believe college professors will inevitably experience further challenges to their intellectual property rights as the movement toward online pedagogy continues. The authors posit conflicts and disagreements of fair use in higher education will not improve unless policies are revised and institutional missions and goals are realigned with the changes in technology.

Problem Statement

The dispute over copyright and fair use has existed for years in education. Many educators simply do not fully understand the limits of copyright when planning courses despite the method for lesson delivery (Aaron & Roche, 2015; Fowler & Smith, 2013; Ginsburg, 2014). Ezor (2013), Lee (2010), and Loren (2015) remark no one has clearly

specified what is to be covered under fair use even after lawmakers added an additional section to the Copyright Act with the intention to provide clarity. Consequently, the issue of copyright compliance is magnified whenever digital media are involved.

Technology-based court cases have been inconsistently decided as judges have been forced to decide rulings on a case-by-case basis (Abruzzi, 2011; Lee, 2010; Perzanowski & Schultz, 2012). Lee (2010) and Nenych (2011) further elaborate on the concern by acknowledging the poor levels of understanding many higher learning institutions demonstrate in fair use for digital media or other communications-based technologies. The problem is transition to online courses for many colleges and universities may be negatively affected if the faculty are fearful of violating copyright; this apprehension can ultimately impact future technology designs and creativity for virtual learning (Abruzzi, 2011; Baughman, 2012; Ferriss, 2012).

Authors of original work have been protected after the inception of copyright laws so that no one else profits from the creations without obtaining permission beforehand. Baughman (2012) recognizes certain circumstances may generate problems when attempts are made to bypass the fair use restrictions. The best example of such a situation, the Georgia State University copyright case, exposed how easily a university can violate copying and distribution limits for the sake of reducing costs and facilitating student engagement (Baughman, 2012; Bell & Parchomovsky, 2015; Enghagen, 2014). Although the primary goal for educators is to discover creative methods for helping learners become successful, intellectual property ownership in online learning environments continue to be vexing (Porter, 2013).

Many colleges and universities have been showing interest and using virtual and hybrid learning methods rather than solely relying on face-to-face courses (Holian, Alberg, Strahl, Burgette, & Cramer, 2014; McPherson & Bacow, 2015; Zweig, Stafford, Clements, & Pazzaglia, 2015). Even so, the interaction between lesson content, instructor, and students is what Porter (2013) identifies to be most valuable for enhancing the learning experience. There must be access to some form of copyright and permissions service to help instructors overcome the challenges of creating effective online courses. Courtney (2014) and Fowler and Smith (2013) find that some university libraries can fulfill the role of assisting faculty regarding what is and is not acceptable copyright practices, but others cannot.

Goal

Traditional, face-to-face classes are no longer the only means for lesson delivery since the introduction of more advanced technology (<https://nces.ed.gov/fastfacts/display.asp?id=80>). Universities and colleges are now more apt to allow open access for different types of learning content and other educational resources (Aaron & Roche, 2015; Nyoni, 2013; Waters, 2013). Aaron and Roche (2015) state schools' copyright policies have become intrinsically more complex because the online method for presenting the materials has essentially changed how copyright affects the author's work. Hence, meaningful and creative future designs for delivery of digitized materials may be adversely impacted if these policies become more complicated over time.

Courtney (2014) details the plan President Clinton formulated in 1993 to simplify the scope of intellectual property and copyright for the advancing digital technologies. The Conference on Fair Use (CONFU), a specialized group of copyright owners and user

interests, was created to discuss fair use issues and develop copyright guidelines for librarians and educators. According to the United States Patent and Trade Office or USPTO (www.uspto.gov/sites/default/files/documents/confurep_0.pdf), the concept of fair use has been perplexing since its inception and intellectual property rights inevitably change as technology evolves. Therefore, the CONFU group representing myriad organizations ranging from publishers, authors, software experts, photographers, libraries, and higher education convened for more than two and a half years to reach consensus for fair use in a digital medium. A final report was drafted on May 18, 1998 and included an informational directory of all groups that participated; a resource of relevant publications and websites related to fair use issues was also added (www.uspto.gov/sites/default/files/documents/confurep_0.pdf).

The concerted efforts of the CONFU were triggered by the need for copyright clarity, but the guidelines were highly contested and many believe the project was unsuccessful (Bartow, 2003; Bell & Parchomovsky, 2015; Courtney, 2014; Ginsburg, 2014; Von Hoene, 2015). The results of the CONFU process were not viewed as helpful and considered a failure in most learning institutions. The University of Connecticut (<http://lib.uconn.edu/about/policies/copyright/fair-use>) informs users because consensus was never achieved and the guidelines exist only in draft form, following them is not mandatory. The University of Texas (<http://copyright.lib.utexas.edu/confu.html>), however, argues that even though the proposed guidelines for distance learning and images are incomplete and uncertain, the suggestions for multimedia fair use are viable and can serve as a good starting point. According to the University of Washington (http://depts.washington.edu/uwcopy/Using_Copyright/Guidelines/Fair.php), the

multimedia guidelines for educational uses were drafted by the Consortium of Colleges and University Media Centers (CCUMC) because of the CONFU committee members' inability to reach agreement. Regardless, the university cautions its users to be aware that the guidelines were never written into legislation, and the school uses them simply for recommendations only.

The goal is to develop a set of best practice, technology-based copyright recommendations for higher learning institutions involved in designing and delivering distance and online course materials. The recommendations should help alleviate the uncertainty faculty may experience, and reassure that neither they nor the school is being placed at risk of incurring massive financial penalties for violating copyright law.

Research Questions

To best address the copyright confusion in higher education, the following questions were posed:

- R1. What are the effects of the legal system's inconsistencies regarding ownership and fair use of digital media on higher education copyright policies?
- R2. What guidelines have been created since the original copyright laws were drafted?
- R3. What are the most critical steps higher education professionals should follow as best practice for fair use of multimedia in distance and online courses?
- R4. What is the consensus among an expert panel of education and legal professionals for the best practices?

Relevance and Significance

The Internet currently serves as the standard application for delivering and receiving digital information because of its widespread adoption and popularity. In addition, the same issues that have plagued the education field before the technological revolution persist (Aaron & Roche, 2015). Present copyright laws are failing to keep up with changes in technology, and thus, the online course delivery structure creates an ongoing challenge in governing the rights of the school, faculty, and students in a digital medium (Dames, 2013; Kernoham, 2013; Nyoni, 2013). Copyright was signed into law in 1976 and designed to discourage unapproved replication of original works and creative efforts. An author may lose incentive and perhaps fail altogether to achieve the inspiration necessary for producing future products without protection (Lee, 2010; Van Hoene, 2015; White, 2013). A clear policy that addresses the coverage of an author's work could help deter blatant infringing while aiding and supporting creativity in the educational setting (Bartow, 2003; Bell & Parchomovsky, 2015; Ferriss, 2012).

Teachers are supported to a certain extent when using a portion of an author's work for non-profit, educational purposes. Baughman (2012), Fowler and Smith (2013), and Goold (2015) reinforce this principle by stating any educator whose intent is to use the author's work for criticism, commentary, teaching, or research is legally practicing what Congress declares to be fair use. The Technology, Education, and Copyright Harmonization (TEACH) Act (<http://www.ala.org/advocacy/copyright/teachact>) was eventually written to address fair use of digitized materials, especially in online learning environments.

Online learners will typically require access to digital lesson content and because class size is sometimes quite large, university professors can potentially face multiple challenges for intellectual property when building a course (Aaron & Roche, 2015; Fowler & Smith, 2013; Masson, 2010; Ncube, 2011). The most common strategy for the professors will be to either avoid using the resources completely, or include the resources in the projects and hope nothing negative develops when there is doubt. Ignorance, though has never been a valid argument for breaking a copyright law (Bartow 2003; Enghagen, 2014; Van Hoene, 2015).

Internet misuse has been a common complaint for many digital copyright court cases. Crews (2011), Ryan and Ferullo (2011), and Tobin (2014) provide insight on the changes Congress made to copyright to provide legal backing for online service providers, the Digital Millennium Copyright Act (DMCA) of 1998 (<http://www.ala.org/advocacy/copyright/dmca>). Crews (2011) continues by describing how lawmakers saw the necessity for enacting some form of anti-circumvention statute to discourage extensive digital piracy and distribution via the Internet. Schools in some cases are progressive and attempt to mitigate piracy through education, while others appear to be indifferent. Having a set of pre-existing guidelines in place should alleviate the problem of misuse and direct copyright responsibility to the appropriate parties (Aaron & Roche, 2015; Fowler & Smith, 2013; Rodriguez, Greer, & Shipman, 2014).

Scope and Limitations

It should be first noted that no data may be collected from participants without receiving permission from an institution's research ethics board (Appendix A). The general purpose was to explore, identify, and reach consensus on the best practice

guidelines necessary for fair use of digitized materials for education professionals. A Delphi method was used for recruiting an expert panel of higher education and legal professionals highly experienced in copyright law; the data gathered from the group was used to create recommendations that may help eliminate the confusion of current fair use laws. Members were solicited via email from different regions of the country to ensure the necessary diversity in the Delphi panel. A detailed explanation of the recruitment process is provided in Chapter 3. Data were collected during a 15-week semester, beginning with an open-ended questionnaire recommended for Round 1 of the process (Davidson, 2013; Green, 2014; Habibi, Sarafrazi, & Izadyar, 2014; Skulmoski, Hartman, & Krahn, 2007).

It is unreasonable to assume the final project would possess no limitations, even though the necessary steps were taken to address any anticipated issues. Unforeseen circumstances undoubtedly shaped the outcome. Technology is dynamic and change often occurs rapidly. Practically all the litigations involving media occurred a few years ago. Decisions would more than likely be different for those same cases in the present. The review of literature began in September of 2014, yet just one year later, a major revision to the copyright law concerning the DMCA was passed.

The research was conducted using survey tools with a Delphi panel as well as information derived from national and state professional association websites. The best that can be hoped for is a 20% response rate from participants when using online surveying (Fowler, 2014). The actual rate of response was 49% for the invitational emails, which greatly surpassed preliminary expectations. Interestingly, respondent rates have shown improvement when the surveys are delivered electronically. De Bruijne and

Wijnant (2014) experienced similar response rates between text message versus email delivery, 74% and 70% respectively. Comparatively, Buskirk and Andrus (2014) achieved a 71.6% response from computer delivered instruments and 69.1% from mobile phone users.

According to Buskirk and Andrus (2014) and White (2013), follow-up emails may be necessary due to multiple variables and barriers such as distance, a participant's schedule, and outstanding commitments. Participant solicitation reminders would have been sent if respondent rates had been significantly less than the 20% suggested by Fowler (2014). Nonetheless, a standard message was sent before the end of each round of the Delphi reminding panelists of the approaching deadline. The process spanned a 15-week semester; receiving the participants' responses within a week for each round was critical for maintaining the planned schedule.

Survey instruments were created instead of using ready-made artifacts. The tools still may not be as strong as some that have existed for years because these custom-built designs inevitably require validation. An initial group of subject matter experts (SMEs) was recruited for providing constructive feedback to begin the validation process. Varying work schedules, geographic time zones, and other commitments as previously mentioned influenced the turnaround time for responses. Zweig et al. (2015) note that it is not uncommon to send multiple reminder emails during this stage of development. Ultimately, two reminder emails were sent to two SMEs during the instrument validation phase when no follow-up responses were received after a week.

The consistent limitation to any survey completion request is motivation (Fowler, 2014). No guarantee existed that all surveys would be completed, even when the plan

included curtailing and simplifying the process as much as possible for the participants. Not to mention, no financial incentives were offered. A technical oversight during Round 1 of questioning resulted in no data capturing. Participants entered their responses, but the data were not saved. The panelists were asked to re-enter responses after this discovery, but one member stated a heavy workload burden would not permit revisiting the questions. Subsequently, that member asked to be withdrawn from the panel.

Finally, the efficiency and accuracy of the information collected from the professional association websites were dependent upon how often the members' profiles are updated. The integrity of the database also depended on the maintenance routines of the systems administrator for keeping the data current. Only a few searches returned invalid contact information secondary to the preceding variables. For instance, the work email address listed in the profile for several members resulted in a mailer-daemon error stating that the user did not exist. This issue persisted in some cases even after cross-checking the address with the member's college or university faculty directory.

Definitions and Acronyms

AAP. The Association of American Publishers is a membership organization that protects the legal rights for publishers globally, while collecting, analyzing, and reporting statistics vital to the publishing industry (<http://publishers.org/about/overview>).

AAU. The American Associations of Universities is a nonprofit organization that was developed to improve policy and address other academic issues for research-based universities (<http://www.aau.edu/about/default.aspx?id=58>).

AAUP. The American Association of University Professors is a collective group of academics dedicated to supporting the rights of higher education faculty and to ensure

quality in all colleges and universities across the country (<http://www.aaup.org/about-aaup>).

ACRL. As a subsidiary of the American Library Association, the Association for College and Research Libraries spearheads various programs for helping academic and research librarians grow professionally with scholarship advancement and community service (<http://www.ala.org/acrl/aboutacrl>).

AIME. The Association for Information Media and Equipment was created primarily for protecting the copyright laws that exist for the film and educational media industries (<http://www.aime.org/about-us.php>).

ALA. The American Library Association provides leadership and direction for library and information services globally (<http://www.ala.org/aboutala>).

CONFU. The Conference on Fair Use was a federal initiative of copyright owners and user interests in 1993 to discuss fair use issues and reach consensus for developing guidelines (www.uspto.gov/sites/default/files/documents/confurep_0.pdf).

Copyright. The legal ownership incentives granted to authors of original work designed to promote the continued creation of creative works (Abruzzi, 2011, p. 88).

Copyright infringement. The unauthorized act of making copies of copyrighted materials and distributing the materials to others without express consent (White, 2013, p. 18).

DMCA. Congress passed the Digital Millennium Copyright Act in 1998 in attempt to update copyright law by addressing the multiple changes in technology use brought on by the Information Age (Tobin, 2014, para. 25).

Delphi method. Created by the RAND Corporation, the Delphi method or technique is a methodology for soliciting the opinions of experts using several rounds of surveying and collecting the aggregate data (Davidson, 2013, p. 54).

DRM. Digital Rights Management is sometimes referred to as TPM, or technological protection measures, and was created as a proprietary control mechanism for preventing unlawful access and copying of copyrighted digital information resources (<http://www.ala.org/advocacy/copyright/digitalrights>).

Fair use. A principle in copyright law that allows others limited use of another's copyrighted works with no need for advance permission (White, 2013, p. 23).

Intellectual property. A term that encompasses ownership interests and unauthorized use of any work that is imagined and then created (White, 2013, p. 9).

IP. An Internet Protocol is a standardized system for communications that dictates how addresses are formatted and data is shared and transmitted between computers (<http://dictionary.reference.com/browse/ip>).

IT. Information Technology is a broad term used to describe enterprise level computing technology in the form of electronic data management and processing, usually related to communications (<http://dictionary.reference.com/browse/information-technology?s=t>).

LMS. Learning Management Systems are large software repositories or local applications used by organizations to deliver courses electronically and track statistics for each user enrolled (<http://learncore.com/lms-learning-management-system>).

MOOCs. Massive Open Online Courses are free educational courses offered over the Internet for any large group of learners (Dames, 2013, p. 24).

NCES. The National Center for Education Statistics is a government operated database that catalogs and analyzes data pertaining to education (<https://nces.ed.gov>).

OER. Open Education Resources are Web-based, license-free educational materials available for unrestricted use by anyone for any purpose (Ncube, 2011, p. 272).

Orphan works. Materials for which the original creator or rights holder cannot be located (Samuelson, 2011, p. 481).

PANE. This acronym represents the four parts of fair use found in the U.S. Code: Purpose, Amount, Nature of work, and Economic impact (Tobin, 2014, para. 17).

TEACH Act. Congress passed the Technology, Education, and Copyright Harmonization Act in 2002 to clarify fair use for teaching environments that do not include face-to-face interactions, such as distance education (Tobin, 2014, para. 26).

The symbol (§). The section mark is used when citing legal documents with numbered or lettered statutes (<http://typographyforlawyers.com/paragraph-and-section-marks.html>).

TOU. Terms of Use are rules enforced by an organization to guide users with its services to facilitate compliance and prevent misuse (Abruzzi, 2011, p. 86).

ULS. The University of Louisiana System consists of multiple public universities within Louisiana that was created to better meet the educational and job training needs of its communities (<http://ulsystem.edu/index.cfm?md=pagebuilder&tmp=home&pid=399>).

USPTO. The United States Patent and Trade Office is a government agency dedicated to protecting authors' innovation and original works by granting exclusivity and trademark registering (<http://www.uspto.gov/about-us>).

Organization of the Study

The document follows a five-chapter format. Chapter 1 serves as the introduction where the context has been set and the research problem stated. In addition, the goal for conducting the investigation has been established here, along with pertinent research questions. This chapter has also detailed the relevance, limitations, as well as the definitions for various terms that appear throughout the report. Chapter 2 presents the review of the related literature and significant research related to copyright and online courses. Chapter 3 outlines the specific methodologies, data collection techniques, and general approach for guiding the process. The analyses of the data collected are presented in Chapter 4, and Chapter 5 contains a summary of the results, discussion, conclusions, and possible recommendations for future work.

Chapter 2

Review of the Literature

Clear policies and procedures development in the academic environment and ongoing reevaluation of those policies are a part of the necessary requirements a campus leadership team must perform on a regular basis (Aaron & Roche, 2015; Crews, 2011; Ferriss, 2012; Ryan & Ferullo, 2011). School officials must be aware of any applicable legal codes and legislation that will affect course design and delivery, the core of operations. The emphasis on policymaking is even greater when course delivery extends beyond the standard, traditional methods (Aaron & Roche, 2015; Ferriss, 2012; Ryan & Ferullo, 2011). The review focuses mainly in four distinct areas: academic fair use and intellectual property, digital copyright concerns in distance and online education, higher education policy and management, and law and education.

Academic Fair Use and Intellectual Property

The USPTO (<http://www.uspto.gov>) is the dedicated organization that recognizes intellectual property as copyright, patents, and trademarks in the United States. Copyright was designed to avoid unauthorized replication of an author's original work and creative efforts. An author may no longer feel encouraged or inspired to create more products without such a safeguard in place (Lee, 2010; Van Hoene, 2015; White, 2013). Baughman (2012) and Ginsburg (2014) explain how although fair use originated in 1709 after the British Parliament's enacting the Statue of Anne, it was not long before Congress decided to draft legislation outlining copyright rules and regulations for the United States. This *common law* was designed to provide details in order that one would

be clear on what is fair use of an author's copyrighted works—using materials strictly for criticism, scholarship, research, or even for reporting the news are all acceptable (Baughman, 2012; Fowler & Smith, 2013; Goold, 2015). Aaron and Roche (2015) provide more perspective by declaring Title 17 U.S. Code § 106 (<http://www.copyright.gov/title17/92chap1.html#106>) of the U.S. Copyright Law as the part that specifically deals with the original author's creative efforts. For this reason, teachers are somewhat covered under fair use when using a portion of the author's work for non-profit, educational purposes.

Baughman (2012) and Goold (2015) expand on the principle of fair use by stating as a common law, educators can copy and distribute an author's work without worrying about committing copyright infringement. Fowler and Smith (2013) and White (2013) validate this security by declaring any educator whose intent is to use the author's work for criticism, commentary, teaching, or research is legally practicing what Congress asserts to be fair use. Henceforth, the TEACH Act (<http://copyright.gov/docs/regstat031301.html>), Title 17 U.S. Code § 110(2) (<http://www.copyright.gov/title17/92chap1.html#110>), was eventually written to address fair use of digitized materials, especially in online learning environments (Ryan & Ferullo, 2011; Tobin, 2014; White, 2013).

White (2013) is certain that faculty in higher education who create lesson materials in this country are considered compliant with the Copyright Act of 1976 (<http://copyright.gov/title17/92appa.html>). However, the author is clear no state or federal laws have been identified to address intellectual property for online or electronically delivered courses. Thus, ownership debates have been documented in many learning

institutions; schools typically stand to profit from online courses at the expense of the faculty. Aaron and Roche (2015), White (2013), and Tobin (2014) have observed the practice of contract negotiating between the schools and faculty, usually in the form of work-for-hire contract agreements that fully relinquish intellectual property ownership claims to anything instructors may create while employed at the institutions.

Fair Use with Technology

Lee (2010), Loren (2015), and Minnock (2014) present a valid argument for why courts need to revise the way fair use complaints for technology are arbitrated, namely speech technologies. Abruzzi (2011) adds additional precaution for the terms of use, or TOU for educators who own and use websites to facilitate lesson delivery. In general, technology fair use cases are characteristically more complicated compared to printed materials because of the impact to future creativity and design of new technology.

Abruzzi (2011), Lee (2010), and Loren (2015) recognize a cause-and-effect type of phenomenon that has forced court systems to adjudicate technology fair use on a case-by-case basis. A great deal of uncertainty exists for the judges when attempting to reach a decision in these types of cases because technology is not mentioned anywhere in the original fair use doctrine from 1976, and no accommodations or clauses have been since written. The overarching problem, as Lee (2010) stresses, is the continuing uncertainty, inconsistency, and ambiguity this ad hoc type of decision-making creates within the legal system.

Unclear legislation of fair use presents economic problems as some companies and venture capitalists are leery to invest in technology that may end up as the focus of a major copyright lawsuit. Ginsburg (2014), Lee (2010), and Samuelson (2011) still

consider fair use for text-to-speech technologies for the visually and learning impaired and Google Book Search to be questionable. Congress's reluctance to revise the fair use clause introduced in the original doctrine lead to the genesis of technological fair use arbitration, the *Sony Corporation v. Universal City Studios* case (<https://supreme.justia.com/cases/federal/us/464/417/case.html>). The Supreme Court ruled in Sony's favor to allow consumers to continue recording movies for free using video cassette recorders (VCRs). Universal City Studios could have been awarded damages ranging from \$750 to \$30,000 for each movie a violator recorded using a VCR, given the clause in the law that supports the option for claiming statutory damages for the winner (Abruzzi, 2011; Bartow, 2003; Ginsburg (2014).

Congress's ambivalence on deciding what type of work should and should not be held to copyright, and what should be available to the public contributes to the limiting of expression for those who create the work. TOU for website owners from Abruzzi's (2011) and Ezor's (2013) perspective can not only be too restrictive in some cases, the agreement also tends to violate users' rights under the Copyright Act and First Amendment (<http://copyright.gov/title17/92appa.html>). Personal use-only TOUs are designed to legally represent the website owner in the event a user breaches the digital contract. Abruzzi (2011) further observes most personal use-only TOUs place the users at an unfair disadvantage even though users are guarded against copyright infringement under the standard fair use clause. Furthermore, website owners possessing no rights to third party content hosted can still participate in the lawsuit against a user accused of violating fair use.

Abruzzi (2011) and Ezor (2013) predict educators, as well as other users who rely on fair use of content over the Internet, may be forced to stop using the services if courts persist with the enforcement of unfair personal-use only TOUs. The authors state the consequences of enforcing the rigid guidelines of many websites' personal-use TOU could lead to significant changes in the education system. Website owners have been generating legal complaints against users despite the provisions made in the Copyright Act allowing access to others' copyrighted works for personal or non-profit gains. Ezor (2013) and Ginsburg (2014) note that courts still must decide what is considered reasonable in the context of education technologies, regardless if the violations a user often commits is permissible under fair use. Essentially, the more the website TOUs are enforced, the greater the limitation to creativity and assertion will be for those who rely on the Internet for content (Abruzzi, 2011; Ginsburg, 2014; Lee, 2010).

Intellectual Property Rights

Aaron and Roche (2015) and Masson (2010) are certain the changes in lesson delivery options have complicated academic freedom in many learning institutions. A professor's ownership of course artifacts is not simple when the Internet or the school's Learning Management System (LMS) is the vehicle for delivery. There are education professionals who see the disagreements and conflicts over intellectual property as only the beginning of the problem (Aaron & Roche, 2015; Masson, 2010; Morrison, Anglin, & Maddrell, 2010). Higher education will somehow need to revise and redefine missions and objectives to align with the changes in technology.

College professors will inevitably experience changes to intellectual property rights as the movement toward online and open courses gathers even more momentum.

Aaron and Roche (2015), The American Association of University Professors or AAUP (<https://www.aaup.org/issues/copyright-distance-ed-intellectual-property>), and Masson (2010) believe academic freedom standards generally found in the traditional classroom setting no longer apply when course materials are placed online. Moreover, the section of law that deters the original authors' works from being copied and reproduced in excess, § 106 (<http://www.copyright.gov/title17/92chap1.html> - 106), does not honor adjunct faculty's work made for hire, represented by § 201 (<http://www.copyright.gov/title17/92chap2.html> - 201) of the U.S. Code. Morrison et al. (2010) surmise the AAUP will always consider work completed by faculty to be exclusive, regardless if the teacher is full-time or a part-time adjunct.

Research involving intellectual property for education is somewhat limited in the extant literature. Cotropia and Gibson (2014) state no one has focused enough on copyright litigation empirical studies; these types of investigations are practically nonexistent. Aaron and Roche (2015) attempt to fill the gap with an investigation of ownership perceptions among community college faculty. The authors surveyed a group of professors to assess whether the faculty believed the instructors should retain full rights to all materials created. It appears the researchers were not thorough enough in the methodology based on the overall study design. No sample size or otherwise clear methodology was provided. Likewise, no recommendations for future studies were included. The data did show the underlying conflict in perspective most schools experience with intellectual property and ownership.

Eighty percent of the 96% total response rate to the ownership survey tool Aaron and Roche (2015) used, with options yes, no, or need more information, chose yes,

faculty should retain complete ownership. Fifty-three percent of the 20% who responded no to full ownership believed the rights for online courses should be shared between the instructor and the school, while 26% were undecided. Forty-two percent of the respondents shared the same co-ownership idea in the traditional face-to-face setting, with 21% of the group undecided.

Digital Copyright Concerns in Distance and Online Education

It would appear faculty and staff should have a clear understanding of how to handle in-class multimedia presentations, and how to properly develop projects using the Internet since Congress passed the TEACH Act (<http://copyright.gov/docs/regstat031301.html>) to help educators specifically address copyright and fair use for technologies. Lee (2010), Nenych (2011), Rodriguez et al. (2014), and Von Hoene (2015) recognize the deficiency in understanding many schools face regarding fair use when technologies such as digital media or other communication devices are involved. Many classrooms may contain multiple learning tools such as text-to-speech technologies; however, the present laws for copyright provide no accommodations or clauses to properly handle technology-based fair use (Lee, 2010; Nenych, 2011; Rodriguez et al., 2014; Van Hoene, 2015).

Google Book Search is a powerful text-to-speech tool for helping visually and learning impaired students, but a great deal of uncertainty remains as to whether it fully complies with fair use. Ginsburg (2014) and Samuelson (2011) therefore stress the complexity of adjudicating technology fair use as compared to printed materials, where the former will inevitably impact future creativity and new technology designs. Speech-

facilitating technologies in general are safeguarded by the Sony doctrine, which basically upholds a user's First Amendment rights (http://www.copyright.gov/docs/mgm/law_profs-lee.pdf).

The wrongful practices of the Internet dilemma has been a universal factor among many court cases for digital fair use that have been litigated. Crews (2011), Ryan and Ferullo (2011), and Tobin (2014) consider the inception of the DMCA of 1998 as congressional efforts to fight for the rights of online service providers. Crews (2011) and Wang (2013) describe how lawmakers saw the necessity for discouraging extensive digital piracy and distribution via the Internet by enacting an anti-circumvention statute. Thus, the DMCA was designed as security for authors who upload or share works over the Internet. Anyone who attempts to bypass safety measures, such as erasing digital watermarks or hacking encryption codes and password interfaces, risks facing the consequences for violating copyright (<http://www.copyright.gov/legislation/dmca.pdf>).

Owen (2015) recognizes that Congress has since published revisions to the DMCA, despite receiving harsh criticisms from content creators (<http://jolt.law.harvard.edu/digest/library-of-congress-publishes-official-dmca-section-1201-exemptions>). The Library of Congress discontinued the strict ban on circumventing technological safeguards for protecting copyrighted works in a final ruling on October 28, 2015, and will now allow exemptions (<https://assets.documentcloud.org/documents/2488067/2015-27212.pdf>). Higgins, McSherry, Stoltz, and Walsh (2015) state the problem with the older legislation is the proliferation of software forced many to find methods for breaking the Digital Rights Management (DRM) technologies for software-device incompatibility reasons (<https://www.eff.org/deeplinks/2015/10/victory-users->

librarian-congress-renews-and-expands-protections-fair-uses). For instance, purchasing an eBook and attempting to access the information with a reader manufactured by a different company than the protected software would render the eBook useless. The same is true for DVDs. Moreover, Higgins et al. (2015) note the difficulty in requesting fair use exemptions under the previous law and the plethora of DRM violation cases reported.

Open Educational Resources

According to Aaron and Roche (2015) and Nyoni (2013), self-directed education has been the ongoing trend in academe ever since the introduction of Open Education Resources (OER). Massive open online courses gained an increase in popularity after a Stanford University professor created a freely accessible lesson on artificial intelligence in 2011 (Kernohan, 2013; Nyoni, 2013). Users located anywhere in the world with Internet connectivity can participate and interact with the online resources, which consist of static documents, streaming videos, or any other type and combination of software tools.

Daniel (2012) speculates society may not see a complete migration to a platform that promises freely available courses from various subjects as conceivable; Koutropoulos and Zaharias (2015) agree too many questions have been raised regarding pedagogy, tuition, and certification. Aaron and Roche (2015), Koutropoulos and Zaharias (2015), Nyoni (2013), and Porter (2013) are convinced the open and online delivery model of MOOCs, or Massive Open Online Courses, is creating an unending challenge in governing the rights of the school, faculty, and students in the current digital medium.

The open courses model is also generating fundamental questions regarding copyright-protected materials that are being shared over the Internet. Nyoni (2013)

supports Daniel's opinion that a movement to massive open courses will only create pandemonium in higher education. The issue of MOOC ownership will more than likely become even more complicated as time progresses in Porter's (2013) assessment. No one has provided a definite answer for ownership or fair use—as outlined in the TEACH Act (<http://copyright.gov/docs/regstat031301.html>)—of academic materials that appear in a MOOC based on current standards (Daniel, 2012; Koutropoulos & Zaharias, 2015; Nyoni, 2013). That is to say, no clear policy currently exists for creating and maintaining courses.

Licensing practices of the materials used for open courses become somewhat inconsistent and unclear for some schools. Porter (2013) cautions any type of course assembled from a variety of works is subjected to multiple separate copyright limitations. Administrators unsure of how to handle the various aspects of licensing can hire a third-party host such as Coursera, Udacity, and Khan Academy if willing to sacrifice intellectual property rights and income (Aaron & Roche, 2015; Nyoni, 2013; Porter, 2013). Porter (2013) estimates schools will earn less than 15% of the revenue produced from the courses when using third-party hosting organizations. Furthermore, it is possible many open online courses will undergo another transformation; these commercial enterprise experiments may no longer remain free.

Nyoni (2013) reports South Africa is projecting a participation rate increase of 70% for students in its universities by 2030 even though the region is falling behind in information and communication technology. South African officials' desire to expand more into open and distance learning has generated anxiety for intellectual properties and ownership as those academics get more involved in MOOCs (Ncube, 2011). Many South

African instructors, like those in the United States, were unsure of who owned open courses when polled. What is more, the educators were unsure of who provided the courses.

Multimedia Files Distribution and Sharing

Podcasting and vodcasting, methods for broadcasting and receiving audio and video-on-demand content over the Internet, have been gaining more attention in education. Schnackenberg, Vega, and Relation (2009) and Tobin (2014) identify this mobile technology as a potential source for copyright infringement because the peer-to-peer structure renders digital ownership and usage rights questionable. Podcasts can take the form of many types of media beyond music, such as talk shows and news programs, of which some are free and others are not. Schnackenberg et al. (2009) attribute wider availability and the ease of access to technology capable of playing content as the two major factors that have attracted education professionals.

Faculty members view podcasts and vodcasts as the ideal supplement to facilitate learning upon initial inspection (Schnackenberg et al., 2009). Several websites offer vodcasts or downloadable educational podcast resources that allow instructors to create podcasts of lectures for students to access and download later. Students are often encouraged to create podcasts and vodcasts to supplement and enhance learning (Schnackenberg et al., 2009). The students may alternatively participate in major ventures such as iTunes U, a robust course management system developed by Apple, Inc. (<http://www.open.edu/itunes>).

Schnackenberg et al. (2009) and Tobin (2014) present the primary concern shared by both the faculty members and the students involved with files distribution. Podcast or

vodcast users who cannot prove the work borrowed to create a new product resulted in a completely new product face the risk of being sued for violating fair use. Those who use nothing but original content to create the broadcasts can be assured of legal rights, but anyone who samples information from other sources possesses no such immunity. Teachers and students should ideally create multimedia materials from scratch to avoid potential troubles (Schnackenberg et al., 2009).

Congress has been aware of the growing field of distance education and made the necessary provisions in 1976 to Title 17 U.S. Code § 110(A) (<http://www.copyright.gov/title17/92chap1.html> - 110) for instructors to transmit copyrighted materials in the courses. The provisions are dedicated to ensuring the materials cannot be used without proper permission and payments. Ezor (2013) declares many professors within different programs, including law schools, practice under the precarious attitude that anything used within education does not require payment or permission from the original author. The resources for purchasing or clearing copyrighted materials are too limited even when schools do attempt to help faculty avoid potential copyright problems.

Section 110 of the U.S. Code (<http://www.copyright.gov/title17/92chap1.html> - 110) handles static recorded media content, but because of the latest improvements in technology, the same accommodation is debatable for teachers who choose to use personal streaming video accounts such as Netflix, Hulu, and Amazon in their lesson content (Ezor, 2013). Most material available for streaming is owned and licensed by third party providers. The terms for content provided to the subscribers is usually contracted for personal use only. TOU will therefore prohibit subscribers from using the

streaming software and services for public display. At best, subscribers are only granted a sublicense to stream videos from the production companies that own the content.

Ezor (2013) warns faculty that playing streamed movies allows the provider to directly track the computer's IP (Internet Protocol) address where the unlawful act is performed. This type of monitoring is unlike general piracy practices that involve unauthorized copying of physical content until the offender is eventually caught. Violating TOU for streaming videos not only places the educator at risk of facing a lawsuit, but the institution can be sued as well, just as universities were implicated along with Napster when students used the schools' Internet connectivity to stream music (Bell & Parchomovsky, 2015; Minnock, 2014; White, 2013).

Higher Education Policy and Management

The energy created by the recent popularity of MOOCs has caused a change in basic assumptions in higher education policy (Daniel, 2012). The topic of clear and up-to-date documents defining ethics and academic integrity has been the ongoing discussion among educators. Rodriguez et al. (2014) state that education professionals are universally challenged with students' beliefs that everything available from the Internet is free to use. School officials must determine the best approach for addressing the unethical practices students sometimes perform when uncovering and sharing intellectual property (Rodriguez et al, 2014; Tobin, 2014).

Expanding opportunities in distance education has forced policy changes for intellectual property at many institutions, and Crews (2011) is aware the protocol for copyright ownership at most academic institutions must be clarified in advance before faculty can make claims on any new works created. The author adds that a sound

institutional policy outlining the guidelines is the most crucial part for determining ownership. Morrison et al. (2010) agree with Crews' views and note the American Association of Universities (AAU) has documented that all works created by faculty while employed at the school shall remain property of the school. The fact remains that a well-defined policy is necessary regardless if schools participating in distance education require joint ownership or allow negotiations with faculty (Crews, 2011; Tobin, 2014).

Academic Plagiarism

Aaron and Roche (2015) and Ryan and Ferullo (2011) emphasize the importance of proper leadership roles within the organization for creating (if necessary) and reevaluating school policy and procedures for dealing with copyright issues. Rodriguez et al. (2014) agree with Abruzzi's (2011) belief that the perceivable ease of copying and pasting from the Internet is a major invitation for copyright violations in the educational setting. Those found guilty of plagiarism can set a negative tone for their respective schools. Academic plagiarism, whether committed by students or faculty, poses a serious threat to copyright ethics and bears serious repercussions (Latourette, 2010).

Rodriguez et al. (2014) are conscious of the current gap in copyright literature that relates to education of college students on the topic. The authors assert responsibility tends to fall on the academic librarian or some other copyright appointed department that may oversee the school's LMS because teachers seldom discuss copyright policies with their classes. Rodriguez et al. (2014) therefore recommend the implementation of information literacy curriculums as a possible solution. The complexity of the Information Literacy Competency Standards for Higher Education released by the Association for College and Research Libraries (ACRL) makes it difficult and unfeasible

to compile copyright protocol into a single session from a strategic standpoint (Rodriguez et al., 2014).

Latourette (2010) details how one institution, Edward Waters College in Jacksonville, Florida, faced losing its accreditation upon being found guilty of submitting a plagiarized document to its accrediting agency. The document was proven to be a copied version of another previously submitted by Alabama A&M University. Similarly, the author finds that Harvard University has made many claims of plagiarism that included its own faculty; several members were accused of failing to give proper credit to secondary sources used in research. Additionally, the school found gross plagiarism on newly selected students' entrance applications. The students and the institution were equally disadvantaged because the acceptance letters were immediately rescinded.

Plagiarism in the academic setting is a widespread attack against copyright. Latourette (2010) writes college and university faculty and administration across the nation are susceptible to being affected. Ethical behavior must be outlined in the school's policy for expected conduct; the penalties and punishments for violations should be written as well. Criminal misconduct and moral turpitude are at least two behaviors suggested for addressing incidents of student and faculty plagiarism (Latourette, 2010).

Existing Copyright Policies

Students' awareness of the school's copyright rules is a key step in policy management. Rodriguez et al. (2014) comment college librarians traditionally have served as the experts, but not all have provided enough information of what is considered safe beyond the e-reserves and some teaching activities. Accordingly, an online copyright course was created by a small group of librarians at Oakland University to target the

needs of the learners. The authors go on to say the popularity of the resource was not as anticipated after successfully launching the multiple-module online course via the school's LMS, but the experience still proved useful based on faculty feedback.

Creating an acceptable use policy for the Internet within a school system is sometimes the responsibility of the college librarian (Rodriguez et al., 2014) or the information technology (IT) department. Brown University administrators realize the outside community as well as students and faculty will seek information and become exposed to organizational resources and sensitive data. The school's online policy (<http://www.brown.edu/information-technology/computing-policies/acceptable-use-policy>) outlines the required code of conduct a user must take to be respectful of the acceptable use policy. The institution does not define or attempt to quantify what is reasonable usage, although its policy is comprehensive and free of excessive legalese. The university does however review and update its policies yearly.

There are proactive institutions that attempt to help users avoid violating copyright and fair use (Rodriguez et al., 2014), while others may shift more responsibility to its clients. Users who access the University of California Berkeley's library resources with assigned, personal identification codes are granted unrestricted access to the Internet (http://www.lib.berkeley.edu/services/comp_use.html). They are properly warned it is the complete responsibility of the user to avoid participating in any unlawful activities, e.g. downloading or distributing sexually explicit materials, unauthorized copying of copyrighted items, etc. Berkeley provides separate links within the website to redirect patrons to separate webpages dedicated to providing information regarding code of conduct and copyright standards. The page focusing on copyright policy is succinct, but

still thorough enough in describing what one can use and what one owns at the institution.

Masson (2010) affirms the University of Louisiana System (ULS) produced its own policy based on federal copyright law that granted institutions ownership of anything created by faculty, however traditional academic copyrighted works were an exception. Individual schools within the system still represent intellectual property practice differently within faculty handbooks or university websites, despite the existence of the ULS policy. The policy creates confusion by stating any of its institutions may at any time claim possession, regardless if the work is subject to copyright. Masson (2010) suggests teachers' unions as a potential solution to the issue, albeit a slow and trifling process for generating ownership policies in some cases. The author continues that faculty senate committees with the goal of passing new policies and providing education for administrators could be another solution.

Duke University has recorded a significant event for the school's administration team (Shah, 2014). The Intellectual Property Board granted an English professor full rights to a MOOC created while employed as faculty after the committee reviewed its policies written in 2000, a time that predated MOOCs. The school's administrators believe the policy is still relevant because of the online education specific revisions that were drafted. Duke's Intellectual Property Board members make interpretations as deemed necessary, claiming the flexible nature of the policy as the reason (Aaron & Roche, 2015). Institutions such as Harvard University and the Massachusetts Institute of Technology, however, do not feel its policies are as adaptable to handle any MOOC

related issues that may develop, and thus are considering making changes to their policies.

Deutsch-Feldman (2013) describes how the AAUP started a national campaign for copyright awareness and uploaded a draft statement on intellectual property to its website to educate and inform the public on ownership issues. The document is open to encourage users' feedback. Additionally, an AAUP subcommittee released a draft report defending the faculty's freedom to innovate, based on the Supreme Court's 2011 decision affirming faculty members' exclusive patent ownership of inventions. The AAUP created an online toolkit asserting full copyright for any project a professor creates to help faculty better understand personal rights.

Relevant Studies

Masson's (2010) general thought is higher education organizations used to be the default owners of anything an online instructor created. The owner can be designated as whomever the faculty and the university agree upon based on federal copyright law; without a written agreement, it is assumed the employer retains ownership. The author confirms no recent studies of intellectual property policies for online courses have been conducted since Kromrey's investigation of 42 public and private Carnegie Doctoral Research-Extensive Universities in 2005. Masson (2010) continues to clarify that Kromrey's studies were built on similar works conducted back in 1992 and 2001. Essentially, in 1992 it was determined that of the 70 research institutions in the sample, five possessed only a draft of an ownership policy while 11 had no policy at all. A similar study conducted within the same 70 institutions in 2001 revealed that only one out of the group had not produced a policy.

Masson (2010) acknowledges both studies showed all the schools claiming at least partial ownership of the faculty's efforts, considering the instructors used the school's resources in creating the materials. Kromrey's 2005 results revealed 100% compliance with online course ownership policies within a sample of public and private institutions. Fifty percent of both types of institutions from the study recognized instructors as the owners of various artifacts such as course syllabi, tests, and lesson notes, a 17% increase from the 2000 statistics. Notably, there was only an increase from seven to 10% for the number of public and private research institutions that allowed teachers control of work within the school from 1998 to 2002.

Law and Education

It is the opinion of some educators that fair use, for the most part, has been ineffective mainly due to loose interpretations of what is reasonable (Crews, 2011; Enghagen, 2014). Several court cases regarding copyright have arisen over the years where fair use has been challenged. Crews (2011) posits the recent academic infringement cases are directly correlated to the effectiveness of some schools' policies. Cotropia and Gibson (2014) report that Federal copyright statute has not been reviewed since the 1970s, but now it is being reexamined.

Evaluation of Fair Use

No one has clearly defined specific terms for § 107 (<http://www.copyright.gov/title17/92chap1.html> - 107) of the Copyright Act to outline fair use, despite the list of purposes that was included in the document. Abruzzi (2011), Lee (2010), and Loren (2015) express unease for Congress's reluctance to make any revisions to the clause because presently, courts are forced to decide complex, technology-related lawsuits on

whatever appears to be fair use on a per-case basis. Judges will weigh multiple factors to determine the degree of benefit achieved by the offender versus the harm suffered by the original author when evaluating fair use court cases (Bell & Parchomovsky, 2015; Ezor, 2013; Minnock, 2014).

Tobin (2014) has been attempting to retrain academics in fair use to help them make better informed decisions. The commonly-held idea in education is that teachers can use up to 10% of a copyrighted work, but this notion is not explicitly written anywhere in the law. The author has used a mnemonic that represents the official four parts of fair use: purpose, amount, nature of work, and economic impact, or PANE.

The acronym PANE is generated from the four parts of the U.S. Code as listed in § 107 (<http://www.copyright.gov/title17/92chap1.html> - 107). Educators can determine the purpose for copying, i.e. for criticism, comment, teaching, scholarship, or research using this model as a quick test. The amount chosen to copy should be limited to sample sizes only. The nature of the work, whether factual or creative, must be assessed and copying the original work should not negatively impact the author's revenue.

Relevant Studies

Cotropia and Gibson (2014) remark not much is understood about how copyright cases are handled, given the major lack of studies completed on the topic. The authors conducted a broad, general study of how copyright appears in the courtroom in hopes that future researchers will investigate where the law is heading. The dockets and pleadings of approximately 1,000 copyright cases from January 1, 2005 to December 31, 2008 were examined, and the results were coded to determine correlations between these types of cases versus other civil suits. The general hypotheses that higher rates of copyright cases

occur in the Central District of California and Southern District of New York was supported, with a 30% file rate of copyright complaints not related to performance media or file sharing for these areas.

The study results did not conclude any favorability in these districts despite the fact a higher number of copyright cases are filed in the Central District of California and Southern District of New York; the plaintiffs are not more likely to win cases. Copyright cases that deal more specifically with patent and trademark, when compared to general civil litigation, had equal end results. Both usually resulted in a settlement or voluntary dismissal, but in general, copyright cases tend to spend more time in litigation.

One can make the argument that legislation drafted over three centuries ago will have a significant impact on current litigations. Cotropia and Gibson (2014) conclude that court systems typically work harder to reach verdicts due to the complexity and uncertainty of copyright law. The authors witnessed a higher percentage of difficult copyright cases (those with at least one substantive decision) than in the earlier study, 50.65% versus 49.39% respectively, when comparing data to a previous civil litigation study.

Significant Court Trials

The legal battle in 2005 between Google and the Association of American Publishers (AAP), along with the Authors Guild of America, was the genesis for ownership debate and public enlightenment of the law on a large scale (Ginsburg, 2014; Lee, 2010; Samuelson, 2011). The AAP and Authors Guild protested Google's venture of scanning printed books to transform them into digital books, stating it was a complete infringement of the authors' copyright (<http://www.nysd.uscourts.gov/cases/>

show.php?db=special&id=355). Google agreed to pay \$125 million as a proposed settlement in 2011 to compensate authors and publishers whose copyrighted works have already been scanned and digitized, but the presiding judge rejected the offer. The case was dismissed in 2013, and the Authors Guild filed an unsuccessful appeal the following year. Items that used to be available to the public via Google Books before the litigation in 2005 have since been restricted.

The court case that set the standard for higher education copyright cases occurred in 1965, before the Internet explosion (White, 2013). The University of California Los Angeles (UCLA) was the setting for *Williams v. Weisser* (1969), whereby a college professor petitioned against the school's selling his lectures (<http://law.justia.com/cases/california/court-of-appeal/2d/273/726.html>). The court ruled in favor of the instructor, noting that the university could not legally claim ownership of his materials. The judge announced that no school is entitled to stifle any teacher's creativity process. Fundamentally, the belief was that teachers should be able to articulate ideas in whatever style desired before distributing notes to their students.

One of the most influential cases that deals with copyright infringement at the educational level is *Cambridge University Press et al. v. Becker et al.* (2012) (<http://media.ca11.uscourts.gov/opinions/pub/files/201214676.pdf>), in which Cambridge University Press, Oxford University Press, and Sage Publications alleged that Georgia State University (GSU) officials disregarded and violated 99 separate copyright laws in 2008 (Baughman, 2012; Enghagen, 2014). Petitioners alleged the school bypassed copying guidelines when instructors placed copyrighted books on the school's website instead of purchasing and distributing Course Packs to the students; the opponents

asserted this was an illegal and unethical money-saving tactic. GSU admitted to using a combination of the library's electronic reserves and the direct embedding of materials into the individual instructors' webpages for students to download.

UCLA was served with a copyright lawsuit that dealt with inappropriate DVD copying from plaintiffs AIME (the Association for Information Media and Equipment) and AVP (Ambrose Video Publishing, Inc.) one year before the ruling of the GSU case. The argument was UCLA officials flagrantly breached the contract after copying DVDs of Shakespeare plays and streaming them online via the school's LMS (<http://newsroom.ucla.edu/releases/court-supports-ucla-streaming-203459>). The original DVDs were purchased from Ambrose Video Publishing, Inc., and were obtained strictly for educational purposes. The judge ruled in favor of UCLA because AIME held no legitimate copyrights to the DVDs, and the case was dismissed. The dismissal implies that any future legal cases involving educational media potentially can be cited on grounds of the outcome for UCLA.

White (2013) summarizes an infringement case that occurred in 2011 at the University of Arizona that questions administrative ethics and leadership. Two professors created an online linguistics course and registered the materials in the United States Copyright Office, but it was later learned that the school was using the content without prior authorization. One professor made the discovery after pretending to be a student and registering in a program for English as a Second Language (ESL). The educators also discovered an additional violator perpetrating the same offense. A lawsuit has been filed, but the case is currently pending and has not reached trial (White, 2013).

Another recent case of fair use and infringement, the *Authors Guild, Inc. et al. v. HathiTrust et al.* (2011), was brought to the court's attention in September 2011 (<http://dockets.justia.com/docket/newyork/nysdce/1:2011cv06351/384619>). The Authors Guild, along with other associations, filed a complaint against the HathiTrust, a digital preservation repository considered to be an offshoot of the Google Books Search project. The organization is composed of multiple universities and other consortia aiming to support the teaching and learning activities of its community. The HathiTrust has collected nearly 10 million scanned books, 76% which are still under copyright.

The Authors Guild pursued what was believed to be unfair use of copyrighted materials despite the decision made in the *Authors Guild et al. v. Google* (2013) case (<http://cases.justia.com/federal/appellate-courts/ca2/13-4829/13-4829-2015-10-16.pdf?ts=1445005805>). Petitioners considered the following to be an issue: (1) scanning and storing of book images and text files for preservation purposes, (2) allowing users to perform word searches on text files, and (3) adjusting formats of the books in whatever manner to meet the needs of the blind or visually impaired users (Crews, 2012). The judge ruled against the Authors Guild on October 10, 2012, stating the HathiTrust was acting within reasonable fair use.

Court systems have observed an increasing number of cases where fair use and technology are the foundation (Lee, 2010). For instance, the author discusses a case (<https://h2o.law.harvard.edu/cases/5105>) related to plagiarism-checking software. The court had to decide if iParadigms, LLC, the founders of the famous plagiarism checker Turnitin, was guilty of copyright infringement in *A. V. ex rel. Vanderhye v. iParadigms, LLC* (2009). Four high school students claimed the program violates the rights of all

users when it archives the papers it checks for plagiarism. Before using the software though, users must agree to the Turnitin website's TOU. Ultimately, the court ruled that the archiving of submitted papers did not infringe the plaintiffs' copyrights, i.e. the authors' creativity was not diminished, the papers were used in a transformative nature, marketability was not affected, and the Turnitin process was concluded to be operating within fair use.

Parent company iParadigms filed a motion in a countersuit against one of the high school students, who violated the TOU agreement by copyrighting his papers and using a college level password intended for students enrolled in the University of Southern California San Diego to upload the papers into the tool. The counterclaim was dismissed without prejudice, and iParadigms filed an appeal. The court foresaw no negative economic impact to the company for the student's using the password.

Relationship of the Literature to the Study

Multiple authors have established the grounds for copyright reform in this country. Outdated legal codes are not satisfactory enough to handle the changes higher education and the other industries are experiencing. Multimillion-dollar lawsuits have been the result of conflicting perspectives of ownership. The very limited number of research efforts into improving copyright and clarifying fair use made the timing of this investigation opportune. It appears a complete overhaul of legislation is not possible until strong and independent methodologies are created against which to test all existing copyright laws. The efforts of the CONFU were not widely accepted and have not been revisited since the draft proposal was published in 1998. Until new legislation is written,

academics could benefit from having guidelines for best practice to facilitate lesson delivery involving technology.

Chapter 3

Methodology

Inconsistencies in policy and practice among many higher education institutions have been documented. Much has also been written regarding how some court systems have been forced to decide copyright case outcomes using whichever methods considered appropriate at the time (Abruzzi, 2011; Lee, 2010; Loren, 2015). Faculty gamble with copyright infringement when designing courses using outside resources when no concrete guidelines for copying and using copyrighted works exist (Aaron & Roche, 2015; Crews, 2011). Therefore, the goal was to create a set of best practice, technology-based copyright recommendations through use of an expert Delphi panel to benefit all involved in the higher education process.

Group consensus for critical issues collected from the literature produced an acceptable list of recommendations by the end of a three-round sequential process. The beginning round of questioning was essential to exploring and generating specific details based upon each participant's expert opinion and perspective (Green, 2014; Habibi et al., 2014). Moreover, items were re-evaluated more than once, allowing participants a chance to reconsider their input from previous rounds of surveying based on the overall group responses. Panelists were provided reports on the findings during each round and allowed to revisit a previous round to edit their initial answers if desired, regardless of the amount of time that had lapsed (Green, 2014; Skulmoski et al., 2007). A final analysis report was emailed to each participant to help ensure data verification and validation.

Research Design

A modified Delphi technique was used to answer the research questions.

Creswell (2014) and Gay, Mills, and Airasian (2012) state the usefulness of qualitative research designs for exploring and understanding the meaning behind a problem an individual or group may experience on a social level. The problem described in chapter one required an examination of the current state of copyright misunderstanding in higher education, which was partly accomplished with a comprehensive literature review. The flexibility of the Delphi method helps with policy investigation by attempting to answer questions relating to what could or should be (Green, 2014; Hsu & Sandford, 2007).

Creswell (2014) makes the distinction that unlike the ethnographic or phenomenological qualitative designs, case studies can focus on things other than people, such as a program, or in the view of this research, copyright guidelines. Baxter and Jack (2008) elaborate on the versatility by describing how case studies can help professionals discover solutions in the current area of practice. The authors further state this type of design can also support evidence-informed decision making for many policymakers.

The Delphi Method

The original or classical Delphi technique has been revised over the years, which increased its flexibility (Davidson, 2013; Skulmoski et al., 2007). Davidson (2013) lists alternates such as the Modified, Policy, Decision, Real Time, Technological, Disaggregative, and e-Delphi. The author adds the earliest definition for the Delphi method or technique identifies it as a strategic and iterative process for acquiring and refining the opinions of an anonymous panel of experts. Habibi et al. (2014) simplify it as

a means for acquiring knowledge by way of a group consensus of experts; the authors also consider it useful for improving decision-making for most qualitative type issues.

Delphi processes lacks the inherent problems found in traditional means for seeking consensus, such as focus groups where one member may dominate and sway the quieter, less assertive members. This concern was easily mitigated because the panel members never met or interacted directly (Davidson, 2013; Skulmoski et al., 2007). Green (2014) agrees with the benefits of anonymity and considers it the lynchpin of the process, but the author also identifies a potential negative effect: a group's perceived isolation. The lack of social-emotional support can be interpreted as too mechanical and can potentially limit a panel member's motivation to participate. Social isolation did not appear to be a factor, and participation was better than anticipated.

As per Davidson (2013), Green (2014), and Skulmoski et al. (2007), data were collected from the anonymous panel of copyright experts over a series of three rounds. Consensus among the members was achieved for different items within the five topic areas; the results are discussed in chapter four. All questionnaires, reported findings from each round, and participation in general were conducted online and via emails (Davidson, 2013; Skulmoski et al., 2007).

Delphi Panel

The expert panel is an integral component that forms the foundation of the Delphi process. Selecting participants should be done carefully and strategically. Skulmoski et al. (2007) offer four criteria that were used for screening the panel members: (1) the participants' knowledge and working experience with the topic, (2) capacity and willingness to volunteer, (3) ability to devote the necessary time, and (4) effective

communication skills. Therefore, after obtaining IRB (Institutional Review Board) approval, each interested participant was instructed to complete a background and qualifications survey to be considered for the panel (Appendices A & B).

No agreement has been made, and therefore no strict rules exist concerning the size of the panel. Hsu and Sanford (2007) observe panels have traditionally been less than 50 members, with the majority representing 15 to 20 experts. Panel sizes have been as small as four, but group error tends to decrease and decision quality improves as the sample size increases (Skulmoski et al. 2007). Nevertheless, Habibi et al. (2014) discourage the practice of random selection for any Delphi process—regardless the number—because the model relies upon the use of expert judgements and opinion. Habibi et al. (2014) support selecting size based on the research topic, aspect of different viewpoints, time and budget constraints, and inclusion of enough diverse individuals with multiple specialties to create a heterogeneous group.

The primary decision factor was whether a desire existed for a homogeneous or heterogeneous sample, where the latter requires a larger number (Skulmoski et al., 2007). Larger group sizes run the risk of higher drop-out rates. Accordingly, a heterogeneous sample was chosen by using a purposeful sample (Creswell, 2014) of 15 copyright experts from each of the six regional accrediting organizations represented in Figures C1, C2, C3, C4, C5, and C6 (Appendix C).

The national professional association representing technology education and copyright law, the AECT (Association for Educational Communications & Technology), was used as a database for searching potential participants (<http://aect.site-ym.com>). Contact information and other demographics were included with each member's profile,

so a total of 45 emails were sent asking for volunteers (Appendix D). Fifteen respondents who agreed to volunteer were ultimately chosen to be panelists after completing the background survey. One member asked to be withdrawn after a technical oversight prevented the “live” data from being captured and saved during the first round of questioning, reducing the pool size to 14.

Instrumentation

Most people are familiar with the use of surveys for measuring public opinion in market research. Important measurements in the social sciences are based on a simple series of questioning and answering (Fowler, 2014). Meaningful statistics can be produced with surveys if a standardized method of measurement is in place to consistently question all respondents. Hsu and Sanford (2007) note that proper planning and management are essential for Delphi studies, especially if the instrument contains many items. Notwithstanding instrument size, the main purpose of the Delphi method is to achieve the most reliable consensus of the participants’ expert opinion by using intensive and sequential questionnaires (Habibi et al., 2014).

A cloud-based enterprise survey software located at CheckMarket (<https://www.checkmarket.com>) was used to create custom surveys and questionnaires. Such tools tend to offer the necessary features to support customizing the document and provide some data analysis. The background survey was developed first and consisted of 20 items for assessing qualifications (Appendix B). This initial survey ensured participants’ backgrounds were somewhat related and their experiences were sufficient for meeting the requirements of the Delphi (Habibi et al., 2014; Skulmoski et al., 2007). For example, key items queried total years of professional experience, frequency of

copyright training, and continuing education. The Round 1 questionnaire followed, with 14 open-ended questions grounded in the literature (Davidson, 2013; Hsu & Sanford, 2007; Skulmoski et al., 2007) (Appendix E).

Habibi et al. (2014) conclude that introducing Likert-style questions into qualitative research to gather opinions can be important for screening. White (2013) observes the flexibility in this type of questioning because not only do they help to achieve a more defined understanding of the respondent's perception, these items can also support forecasting when analyzed properly. Five- or seven-point Likert scales have been commonly used, although others adapted either two-, nine-, 11-, or 12-point scales to fit their needs (Habibi et al., 2014). The Round 2 and Round 3 questionnaires were created with 13, five-point Likert scale items ranging from "Strongly Agree" to "Strongly Disagree" (Appendices F and G). The fourteenth item on each tool represented an open-ended question that did not require the same treatment as the others.

Validation

Gay et al., (2012) emphasize the importance of instrument validity and reliability, especially if one chooses to create his own survey or questionnaire. Equally important, Fowler (2014) and Gay et al. (2012) stress the significance of using the most suitable questions for collecting relevant data regardless of the survey instrument type. Fowler (2014) advises the use of survey questions created with a pre-planned question objective to ensure the best statistical data. Davidson (2013) suggests using strictly open-ended questions for the initial round of the Delphi process while carefully avoiding potential bias and leading the respondent. Skulmoski et al. (2007) refer to this practice of including open, broad questions as casting a research net, which should favorably collect more data.

The Round 1 questionnaire was completed first and validated with a panel of experts possessing extensive copyright policy experience. Each SME was asked and willingly agreed to provide the critical feedback requested (Appendices H & I). According to one SME, the opening questions in the original draft focused on gathering experience but failed to differentiate work history from professional experience. Likewise, another expert recognized the concept of copyright was not properly divided into separate units of knowledge, such as fair use or work-for-hire.

Adding section headers, such as background, opinions, etc. with a brief explanation for each section to help clarify expectations and provide order was highly recommended and subsequently implemented. It was also cautioned to not assume all would understand exactly what an LMS is, even though two examples were listed in the question. The concern was easily addressed by defining the acronym in parentheses. Additionally, it was emphasized a few opinion questions required revising. For example, instead of generally asking who should be, better results could be achieved by merely rewording those questions to specifically ask the participants who they *think* should be. An opportunity for transparency was almost missed by not explaining or providing examples for what was meant by course content. Similarly, many of the experts raised concern for using qualifiers when asking respondents whether they agreed with considering themselves valuable copyright resources for colleagues.

Green (2014) suggests further validation can be assured if the Delphi expert panel's heterogeneity is preserved. Habibi et al. (2014) add that validity of results is strongly dependent on the panel members' competency and subject knowledge; the ideal group should be a heterogenous combination of individuals with multiple specialties. Hsu

and Sanford (2007) extend the concept further by stating all Delphi participants should be highly trained and capable of sharing their knowledge of the target issue.

All members for this panel satisfied these prerequisites for heterogeneity. The group was highly skilled in copyright policies, amassed an average of 20 years of professional experience, and worked in varying higher education capacities from administrative leadership and counsel, to online or hybrid classroom professors. They each at a minimum earned at least a Master of Library Science, Juris Doctorate degree, or both.

Approach/Procedures/Research Questions

The approach for answering the research questions involved questioning a group of copyright experts, a characteristic of the qualitative methodology (Creswell, 2014). The interviews did not take place in person, rather over the Internet because a modified Delphi technique (e-Delphi) was used instead of the classic version (Davidson, 2013; Skulmoski et al., 2007). Skulmoski et al. (2007) describe the classic Delphi process as a three-round iteration successively building on the feedback of previous rounds. The main point of the method is to seek the most reliable consensus through the collective wisdom of an expert panel; this in turn should lead to a more thorough and comprehensive outcome (Davidson, 2013; Green, 2014; Habibi et al., 2014).

The process was based on recommendations suggested by Green (2014) and Skulmoski et al. (2007). Step 1 was the preliminary phase that began with developing the research questions. A total of four questions (R1, R2, R3, and R4) were generated after a comprehensive literature review. Synthesis of the literature provided the necessary information for answering R1 and R2, what are the effects of the legal system's

inconsistencies regarding ownership and fair use of digital media on higher education copyright policies, and what guidelines have been created since the original copyright laws were drafted? Successful completion of the Delphi and analysis of the results explained R3 and R4, what are the most critical steps higher education professionals should follow as best practice for fair use of multimedia in distance and online courses, and what is the consensus among an expert panel of education and legal professionals for the best practices?

Step 2 required selection of the appropriate participants to form an expert panel. Forty-five emails were sent to members around the country belonging to the AECT technology education and copyright law professional group (Appendix D). One member forwarded the message along to a work colleague, and a total of fifteen prospective candidates expressed interest. An embedded hyperlink was included in the solicitation emails that directed the candidates to the background and qualifications survey (Appendix B).

A copy of the consent form was included within the background and qualifications survey that could be either previewed or downloaded (Appendix J). Each panelist was requested to provide a physical mailing address to receive a consent form, complete it, and return in a postage paid envelope. One member opted to download the form, scan the completed document, and submitted it as an email attachment. A reminder email was sent three days before the projected deadline to any participant who had not completed the questionnaire (Appendix K).

Each candidate was screened and fulfilled the four criteria outlined in the Delphi panel section, therefore an instruction email welcoming members to Round 1 was sent to

each panelist (Appendix L). The instructions outlined the upcoming process, provided a unique participation identification number, and included a projected deadline for completion.

Step 3 was the official beginning for the first round of surveying. An embedded link to the 14, open-ended style questions for the Round 1 questionnaire was included in the previous instruction email (Appendix L). Responses from the questionnaire were coded and analyzed.

Step 4 started Round 2 with presenting the panel a summary report of the Round 1 analysis (Appendix M). The report was attached as a pdf file to individual instruction emails for Round 2 (Appendix N). The emails also included a reminder of the participants' unique participation number, a projected deadline for completion, and an embedded link to the new 14-question Likert scale questionnaire collated from the findings from the previous round (Appendix F). Participants were given the option to revise any responses they deemed necessary after reviewing the report.

Step 5 represented the third and final iteration in the process, Round 3. The responses from the previous round were analyzed and summarized into individual reports (Appendix O). A pdf version of the documents was emailed along with instructions for completing Round 3 (Appendix P). Similarly, the emails contained reminders for the participants' identification number, completion deadline, and an embedded link to the new questionnaire created from Round 2 analysis (Appendix G).

Participants used their personalized summaries from Round 2 to modify their responses to the Round 3 14-question Likert scale questionnaire. The content of this document matched that of the previous round, apart from the omission of one question

item where all members chose Strongly Agree during that session. Panelists were again allowed to revisit and revise their responses from either of the previous rounds, however, the primary objective for Round 3 was to determine if the panelists were satisfied with their Round 2 responses.

Step 6 marked the end of the process. An analysis of Round 3 responses was organized into a final, comprehensive summary for all rounds (Appendix Q). Each participant was emailed a pdf version of the final summary and asked to verify the results. The data were successfully validated and the results are discussed in chapter four.

Data Collection and Analysis

A customized survey, created and validated in the early phase with the help of four SMEs, served as the initial data collection instrument (Appendix B). The questions were conducive to evaluating participants' backgrounds beforehand and their opinions in Round 1 of the process. Data relating to background information and experience for the expert panel were initially collected during the early planning phase. Potential candidates' contact and profile data were first gathered from the AECT website (<http://aect.site-ym.com>). Afterwards, candidates submitted demographic and professional experience information online via the CheckMarket survey platform (<https://www.checkmarket.com>).

Creswell (2014) identifies the tasks of collecting data as obtaining information through unstructured or semi-structured observations, interviews, documents, and visual materials in addition to setting the boundaries for a project. Any necessary protocols for recording the information collected at this step must be clearly established beforehand. In

effect, the data collected was from interviews conducted over the Internet, via email, and can be classified as qualitative/categorical (Creswell, 2014).

Preliminary demographic data invariably include dichotomous nominal types, such as gender and yes or no responses (Terrell, 2012). Nominal data represented eight of the 20, or 40% of the survey items (Appendix B). The responses to the open-ended questions for Round 1 of the Delphi process generated narrative data that required coding (Appendix M). Round 2 and Round 3 included items for the panelists to rank by level of agreement or disagreement (Davidson, 2013) (Appendices F & G). Ranking data are considered ordinal; their order is important and significant (Terrell, 2012).

Either the mean or median score can be calculated as part of the measures of central tendency for survey responses, but it is highly recommended to use modes and medians instead (Green, 2014; Vernon, 2009). These data are ordinal in nature, and calculating mean scores does not in any way represent true averages. Ideally, testing Delphi data for consensus should involve standard deviations, interquartile ranges, and percent agreement or disagreement (Green, 2014; Habibi et al., 2014; Hsu & Sanford, 2007; Vernon, 2009).

Determining Delphi Group Consensus

Green (2014) asserts consensus among the expert panel may be reached after several rounds, although some panels converged after only two rounds. The author suggests calculating the mode, median, and mean (measures of central tendency) to achieve the most accurate viewpoints from the group. Avella (2016) argues consensus does not necessarily mean 100% of the panel agreed on an item, especially when the group is heterogenous. Vernon (2009) adds that consensus has traditionally ranged

anywhere from 55 to 100% agreement, with most considering 70% to be suitable. Regardless, measures of central tendency, standard deviations, percent of panel agreement, and interquartile ranges (the middle 50% of the responses) have been documented most often for determining whether a panel reached consensus.

Habibi et al. (2014) recognize various methods that have been proposed beyond measuring central tendency. The authors cite a previous study whereby 15 options for achieving consensus were discovered, and discuss one method, Kendall's coefficient of concordance (Kendall's W), that was calculated in addition to the mean rank and standard deviation. Kendall's W ranges from 0 to 1; values closest to 1 indicate stronger degrees of consensus. The coefficient has been successfully integrated into other consensus determining methods to inform a researcher when to stop the process, even when panel sizes are fewer than 10 participants (Habibi et al., 2014).

Skulmoski et al. (2007) state analysis of the survey results from Round 1 should be accomplished using qualitative coding or descriptive statistical summaries that include medians and upper and lower quartiles when using this three-round model. The authors also approve of sharing graphical summaries, like Reality Maps with the panel. It is important to allow panel members the opportunity to change or expand responses from each previous round. Preferably, the questions should become more focused on the specific details each round as the process continues. Skulmoski et al. (2007) further state it is common to rank and rate Round 1 responses, a practice essential for improving the reliability of the results. Hsu and Sanford (2007) absolutely discourage the use of mean scores and instead support modal scores since mean values do not accurately reflect each panelist's viewpoint.

Interquartile Range

The interquartile range, or IQR, was used as part of the analysis for overall panel agreement in the Likert data from Round 2 and Round 3. Henning and Jordan (2016) agree with Hsu and Sanford (2007) that this tends to be one of the major statistical indexes used frequently across many Delphi methods. The middle 50% of the responses is the focus, which makes this measurement objective and rigorous enough to determine if consensus exists. According to Henning and Jordan (2016), the most customary practice is to declare consensus for values less than one. Figure 1 represents an example of a hypothetical response from a Likert scale item, where the responses ranged from Strongly Agree to Strongly Disagree. The resultant value of two for IQR would suggest no consensus among the 11 respondents.

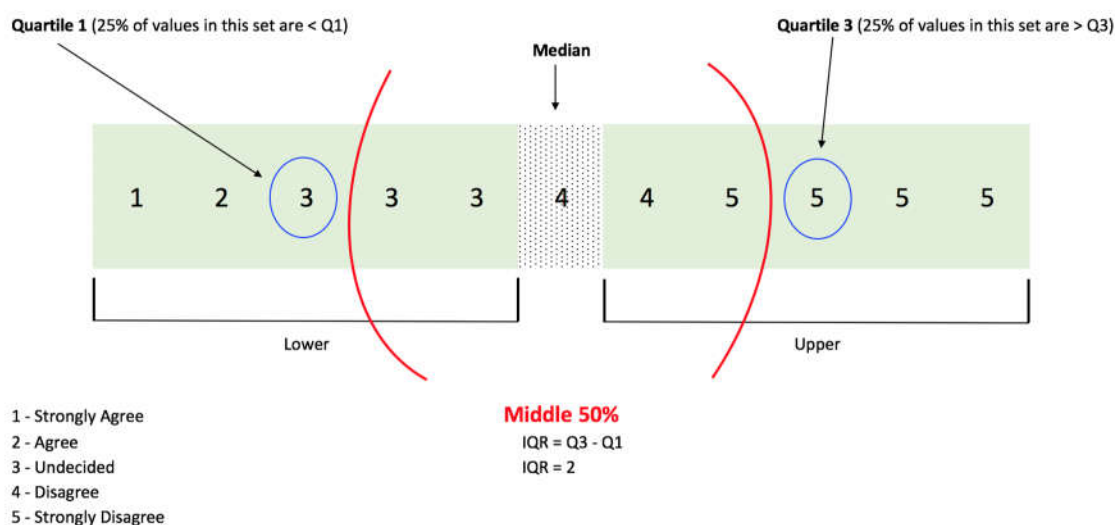


Figure 1. IQR as calculated from a Likert-type scale item.

Standard Deviation

Standard deviation was used as an additional criterion for helping to assess the level of consensus. Levels ranged from no consensus to high, with the highest falling

between zero and one (Henning & Jordan, 2016). This assessment for level of agreement or disagreement mirrored the IQR in terms of the significance of the value obtained, whereby results less than one are positive and desirable.

Percent Agreement

Habibi et al. (2014) discuss the use of five-, seven-, or even nine-point Likert scales in qualitative research for determining importance or screening items. The universal design for all Likert-type scales is the inclusion of the contrasting labels “extremely agree” and “extremely disagree” at both ends of the scale. The authors express no absolute preference, so a five-point Likert questionnaire was used in Round 2 and Round 3, ranging from Strongly Agree, Agree, Undecided, Disagree, and Strongly Disagree. Subsequently, the categories were collapsed into an agree/neutral/disagree format to perform data analysis (Putnam, Spiegel, & Bruininks, 1995). Essentially, the first two and last two categories were merged, which resulted in the three labels Agree, Neutral, and Disagree. Putnam et al. (1995) suggest a threshold of 80% or greater for percentage agreement or disagreement. *Table 1* represents the three methods of analysis that were used for determining consensus.

Table 1

Three Measures to Assess Consensus

Parameter	Condition
Interquartile Range	$0 \leq \text{IQR} \leq 1$
Standard Deviation	$0 \leq \text{SD} \leq 1$ (<i>High level</i>) $1.01 \leq \text{SD} \leq 1.49$ (<i>Reasonable/fair level</i>) $1.5 \leq \text{SD} \leq 2$ (<i>Low level</i>)
% Agreement or Disagreement	$\geq 80\%$

Resources

All accomplishments for this project relied on people resources in addition to computer hardware and software applications. Input was collected from a total of 19 higher education professionals highly experienced in copyright law. Feedback from copyright policy experts was necessary beginning with the validation stage for the custom-made survey instrument (Appendix E). *Table 2* represents the group of professionals who were consulted as subject matter experts.

Table 2

Copyright Subject Matter Experts

Name	Company	Position	Contribution
1. Kevin Smith	University of Kentucky	Dean of Libraries	Analysis and evaluation of tool design and content
2. Bruce Abramson	President, Informationism	Intellectual Property Expert	Analysis and evaluation of tool design and content
3. Melissa Levine	University of Michigan	Lead Copyright Officer, Librarian	Evaluation of content
4. Stephen Carlisle	Nova Southeastern University	Copyright Officer	Evaluation of content

The Internet was the primary means for acquiring data from the AECT professional association website (<http://aect.site-ym.com>). This electronic medium also facilitated surveying and communicating with each participant. Access was accomplished through home-based computers along with personal mobile devices. Electronic data were stored on encrypted physical hard drives and backed up with the Google Drive cloud-based file storage service (<https://www.google.com/drive>). Active passwords for accessing files and documents were stored using Dashlane 4, a secure password management application (<https://www.dashlane.com>).

An investment in a statistical software program is usually necessary because qualitative data analysis can be complex. Coding for Round 1 responses was completed with the robust, built-in data analysis features offered by the CheckMarket online survey development company (<https://www.checkmarket.com>). Graphic design software

products Microsoft Paint and Adobe Photoshop were used to create custom graphics and figures—they also made editing artifacts created with Microsoft Word possible.

Descriptive statistics were performed with Microsoft Excel, CheckMarket, and a Texas Instruments TI-89 scientific calculator.

Summary

The value of the results should be quite beneficial for addressing the complicated characteristics of copyright law as it relates to higher education. Schools have been attempting to keep pace with the current trends and use the technology in a manner believed to be correct, but some have been sued for copyright infringement. A modified Delphi approach was instrumental in delving deeper into the issues presented by allowing a highly skilled, diverse group of copyright professionals to fully express their opinions and concerns. Most would probably agree that uniformity in copyright practice should be the primary goal for educators when planning both face-to-face and online courses; the latter requires more careful attention. These findings will ideally help introduce a new perspective to the future of online education.

Chapter 4

Results

Educators in higher learning have had mixed feelings over practices related to copyright on their campuses, from both legal and ethical perspectives (Ferriss, 2012; Tobin, 2014). Current legislation is vague and does not clearly explain the exceptions to fair use. Moreover, Congress did not expect rapid transformations in technology when the original copyright doctrine was drafted. Abruzzi (2011), Lee (2010), and Schultz and Perzanowski (2012) observe that technology-based copyright infringement legal cases have been decided inconsistently due to this oversight. It is generally understood that teachers will be covered for the most part if they use an author's work for educational purposes, but the ongoing adoption of digital media and virtual learning poses additional questions and concerns (Aaron & Roche, 2015; Von Hoene, 2015).

The goal was to create copyright best practices guidelines for technology in higher education. Seeking opinions from a group of professionals experienced with copyright law over the course of three sequential rounds was the ideal solution. Each expert participant provided enough detailed responses to generate consensus for key items that were listed as major concerns in the literature. Surveying the group to provide anonymous feedback worked well to minimize any potential domination among the panel and preserved the authenticity of their responses. Given these points, survey implementation and an evaluation of the data analysis and findings are formally discussed in this chapter.

Implementation

The final efforts made before implementation spanned over nine months, from February 2016 to November 2016. Gathering a group of SMEs to successfully validate the survey instrument was the first major task completed, followed by approval from the IRB (Appendix A). Informed consent documents were created shortly after receiving permission, and 45 participant recruitment emails were sent at the end of October 2016. Two emails were returned as invalid or undeliverable, owing to possibly a failure to update their AECT membership profiles, or a separation from the job. Fifteen ultimately satisfied the Delphi panel requirements described in chapter three, therefore each was directed accordingly to the first round of surveying.

Volunteers accessed the background survey online and responded to the questions over a week. The subsequent questionnaires were also hosted online and participants entered data correspondingly over a period of one week for each round. Analyses of results were separately emailed to each panelist. Turnaround time between rounds was less than a week, except for the last round and final summary where processing required more time.

Delphi Panel Analysis

Selected panelists were geographically diverse as depicted in Figure 2, but shared many similar qualities such as educational accomplishments, current work status, job duties, etc. The group consisted of 15 members, eight males (53%) and seven females (47%). All participants were full-time faculty working as copyright experts in their respective colleges or universities. Job titles ranged from Dean of Libraries to University General Counsel. Nine (60%) earned Master's degrees relating to library and information

science, five (33%) possessed a law degree (Juris Doctorate), and three (20%) completed a terminal degree (EdD or PhD). Professional experience on average was approximately 20 years. Thirteen panelists (87%) reported receiving formal copyright training on a regular or as needed basis, with the remaining two (13%) stating they remain up to date on continuing legal education by reading and completing self-studies. Twelve (80%) stated they conducted scheduled or as needed copyright training inside or outside of school; the remaining three (20%) were more involved in leadership and development.

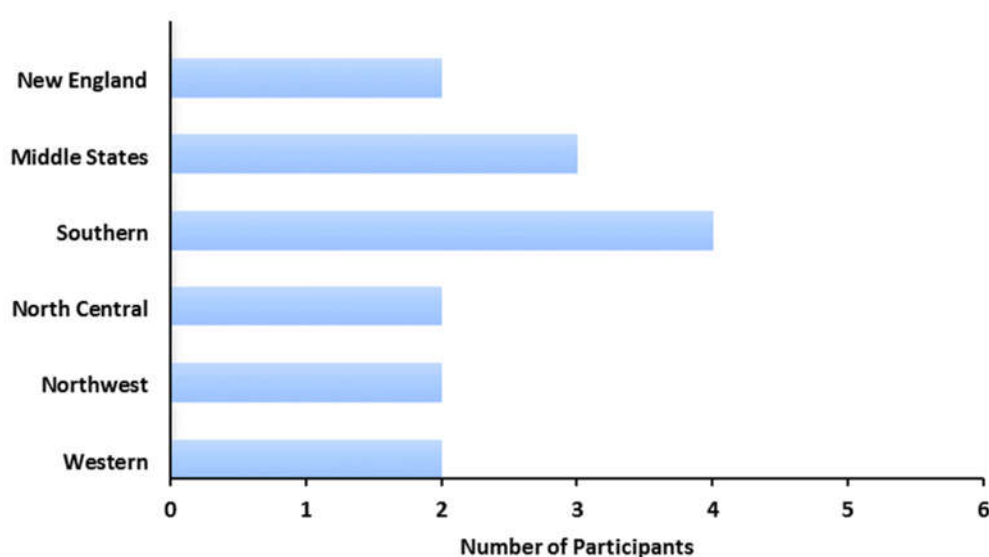


Figure 2. The U.S. Department of Education six regional accreditation territories.

Evaluation

The Delphi took place between October 2016 and December 2016, beginning with the recruitment of panelists (Appendix D). Response rates were better than anticipated, with 21 of the 43 working emails (49%) being acknowledged. Seventy-one percent of the 21, or 15 volunteers who were eligible agreed to participate. Busy work schedules or a lack of interest in general was the common response for the 29% who

declined the invitation. The average response time was approximately three days for all who returned the email.

Round 1 Results

Eleven (79%) of the 14 members completed the first round 14-question questionnaire during the first week (Appendix E). An additional panelist later recorded responses for the first two rounds before the final round concluded, which increased the response rate to 80%. The summary of responses for the round was emailed to each participant (Appendix M). In some cases, multiple responses to a single question from a panelist were coded into several categories, such as fair use, ambiguity, understanding, PANE, policy concerns, etc. The data collected from the open-ended questions revealed seven general themes:

1. There is a lack of understanding of proper PANE assessment;
2. Time and copy limitations are dependent on different circumstances;
3. Faculty policies for copyrighted works should focus on permissions and fair use assessment;
4. Recent changes to DMCA policies for educators are still too limiting;
5. Specific portion limitations for copying may still be valid;
6. PANE assessments are still necessary for orphan works;
7. Future educators will continue to encounter problems with fully understanding fair use.

The results were grouped into five distinct areas: fair use in general, time limitations, copying and distribution limitations, portion limitations, and outlook for the future.

Fair Use in General

Four (36%) of the 11 respondents commented that confusion over fair use for online and distance educators is directly connected to poor comprehension of the PANE model. They described how most have no understanding of how to properly assess their work against the acronym and effectively apply it. For example, one member wrote:

No one, not even a trained lawyer, can appropriately gauge a fair use case or scenario without first understanding the fundamentals of U.S. copyright law. This is a recurring mistake: people go right to fair use analysis without learning the basics about works, ownership, and rights. Therefore, the inability of people to understand the rest of copyright law causes the most confusion for educators when trying to understand fair use.

Another responded that:

Educators confuse Fair Use with the Teach Act and Section 110 (face to face and virtual) of the Copyright Act. Furthermore, some educators (falsely) believe that the LMS or online version of their class is an extension of their physical classroom. And finally, instructors don't know enough about Fair Use to do a fair use analysis.

Further comments suggested the confusion is increased by the ambiguity of fair use and lack of existing clear guidelines. A panelist echoed that sentiment by writing “The ambiguity and flexibility which, ironically, is one of its strengths.” Two others surmised “Most just assume it's an open license to do what they want,” and:

I think the idea between authorship and ownership are often blurred. What I see most often is that instructors/course designers will find something either on the

open web (Google search) or through the library's subscription databases and not understand whether s/he may use it or not in a course most often with the result of if I can find it online that means I can use it without considering who posted it and for what purpose.

Time Limitations

Thirty-eight percent of the recommendations from nine of the 11 respondents were conditional for suggesting how long online and distance educators should be allowed to use multimedia projects with copyrighted materials incorporated. Key statements made were related to fair use and risk analyses, initial permissions, and licensing. For example, one member declared “If using FU, analysis should be done on a term by term basis. If licensed, then for as long as the license permits.” Another wrote “Assuming they got appropriate permissions - forever. If they didn't, I would say they need to stop immediately. If they're arguing Fair Use then I assume this could change.” Only eight percent of the responses for this scenario recommended a finite time, i.e. one academic year, three consecutive semesters, and two to three years. Nine (82%) of the 11 panelists expressed agreement that the same time limits should also apply to both synchronous and asynchronous distance education.

Copying and Distribution Limitations

The majority did not suggest a specific number of copies an online educator should be allowed to make for a multimedia project created with copyrighted materials. Nine (82%) of the 11 stated it would depend on a range of factors. For example, one respondent wrote “no bright line number-- consider fair use,” while another stated “I would need more information. Is the material to be used for a course assignment? It

depends on whether or not permission of copyright owners was obtained.” Three (27%) of the 11 recommended either one or two copies: “One backup copy for preservation. Without more information, it would be difficult to determine.” Subsequently, seven (78%) of the nine who responded it depends also expressed that no exceptions should exist. Statements included “I don’t think there should be exceptions. I believe that the agreement should be reevaluated periodically or redone if the instructor wants to use something outside of the initially agreed upon intent,” and “There may be several exceptions (e.g. public domain status, exhaustion, fair use) given a certain set of facts. Also, with electronic materials, contracts may override what copyright exceptions are available. It's difficult to say in isolation.”

Six (55%) of the 11 respondents made a reference to PANE when asked what an online education faculty policy should cover for work-related downloading of multimedia content from the Internet. One panel member wrote:

Assume works are 'in copyright' unless otherwise noted. Institutional policy regarding Section 110(2) and Fair Use. Exactly what is expected of faculty. How to do it. What documentation to retain. Information on whether institutional legal council will back them up if they followed the policy and can prove it.

Information on where to get more help. Examples of what to do and what not to do.

Another specifically stated:

I think the policy should outline Fair Use and the factors associated with Fair Use.

I think the policy should cover making copies and the factors surrounding physical copies of resources. I think the policy should cover a little about Public

Domain and Creative Commons licenses, and stress the idea of authorship and ownership and that things found on the web are not necessarily there with the author or copyright holder's permission.

Yet another member wrote "Always attribute, even if the material is freely usable. Also, for work that is copyrightable, have reminders about fair use, and the 4 factors."

Nearly 50% of the panel continued to stress permissions, fair use assessment, and the TEACH Act when asked what the most crucial point the faculty policy should emphasize regarding distribution of multimedia projects created with copyrighted materials over the Internet. The simplest response was "Perhaps to get it cleared by the university, first." One participant commented "If you didn't make it, don't have permission to share it, or it doesn't have a Creative Commons license, you need to do a Fair Use analysis to determine if sharing the work online is fair." Another panelist cautioned "that the faculty member (if the institution complies with the TEACH Act and is indemnified) is financially liable for their actions (this is to get their attention)."

The faculty policy question was extended to ask what should it state regarding altering copyrighted works that were incorporated into a multimedia project. Responses varied, but still shared a common tone relating to fair use assessment. For example, one respondent wrote:

I don't see a need for a separate policy, which might implicate the institution, when basic education about the rights of a copyright holder, fair use, the TEACH Act, and how to document their arguments for their use. We need to teach faculty that academic use does not automatically mean Fair Use applies.

Another stated “I think the policy should stress the intent of the work and making sure that the changes follow the fair use guidelines.” “Focus on transformativeness” was suggested as well.

Multiple opinions were stated for the recent changes made to the DMCA. The responses in general reflected concerns for educators, such as “It needs to be revamped; it's cumbersome for both rights holders and those looking to fairly use protected content,” “I think the recent changes to the DMCA potentially limit creativity and somewhat challenges,” and “The DMCA unfairly limits fair use.” One panelist further stated, “The three year review creates a number of issues; some items should be able to be 'renewed' automatically, without re-application every three years. This would make the process a lot easier for faculty to follow.”

Portion Limitations

Seven (64%) of the 11 participants offered opinions for fair use portion limits of multimedia, pictures, text, etc. A common reference to PANE was again observed, even though answers varied. One panelist declared the portion should be “as much as is necessary for the pedagogical purpose, taking into account the four factors.” Another expressed a concern that “It is hard to display less than 100% of an illustration or photograph. Thumbnails should be allowed with links to higher-resolution or larger originals.” Additionally, a member wrote:

Databases can be copyrighted. Numerical data sets cannot. My responses assume that most courses are not 'open to the world' (i.e. they are not MOOCs.) Assigning percentage amounts to proposed uses is too arbitrary of a solution to determining what is fair, in my opinion.

Table 3 represents a summary of the responses.

Table 3

Delphi Round 1 Portions Limitation Responses

	Panelist 1	Panelist 2	Panelist 3	Panelist 4	Panelist 5	Panelist 6	Panelist 7
Computer Software	5%	10%	0	100%	0	Unsure	As much as necessary based on PANE
Illustrations and photographs	5%	10%	100%	100%	Depends	100%	As much as necessary based on PANE
Motion media	5%	10%	10%	100%	10%	10%	As much as necessary based on PANE
Musical works, lyrics, and music videos	5%	10%	100%	100%	10%	Up to 1 min. or 10%	As much as necessary based on PANE
Numerical data sets	5%	10%	100%	100%	Depends	100%	As much as necessary based on PANE
Text material	5%	10%	10%	100%	10%	Up to 2 paras. or 10%	As much as necessary based on PANE

Opinions were mixed when the portion limitation was applied to orphan works. Six responses indicated the limits should not change, and three stated they should. For example, one member wrote “No, I don't think they should change - these works are 'orphan works,' still protected by copyright. An unfortunate situation, but being an orphan doesn't have any effect on fair use.” Another wrote “Yes. Making a good faith effort to

contact the rightsholder reduces your risk of a suit. I would encourage them to document their efforts and increase their usage to a reasonable portion for their teaching purpose.”

Outlook for the Future

Nearly all respondents referred to the issue of education and knowledge deficits for fair use and copyright law overall as being the biggest obstacles for online educators in the future. One panel member wrote “Knowing how much material out of the total work is considered a fair use” in response, while another stated “Understanding the intricacies” would cause problems in the future. Growing expenses and enforced restrictions were also mentioned. For example, “Fair Use is too expensive and difficult for full time faculty. Given the scope of material available (YouTube grows by ~50 hrs per minute) it's impossible to administer the balancing test” was offered as a concern. Also, another comment was “Because of the increasing restrictions placed on educators by publishers and other copyright holders, there is an increase in the fees associated with use and there will be a more proactive approach to prevent violations on copyright.”

Round 2 Results

Many questions contained subparts, thereby yielding a total of 54 responses for 13 questions. Question one (Q1) essentially asked members for their unique participation identification number. Percentages for Agree, Undecided, and Disagree in addition to modes, medians, standard deviations, IQRs, and consensus status are represented in *Table 4* (Appendix R). A total of 11 (79%) of the 14 panelists provided responses. Twenty-three of the 54 items (43%) reached consensus in this round. Items belonging to nine of the 13 questions received satisfactory agreement, whether agreement or disagreement was expressed.

High consensus was observed multiple times, but only two questions (Q2 and Q8) achieved this level for all items. For example, 100% of the responses for Q2a displayed an agreement that the ambiguous nature of the law and understanding the basics of works, ownership, and rights causes the most confusion for educators. Likewise, 100% agreed with Q2d that understanding the basics of works, ownership, and rights causes the most confusion for distance and online educators. Ninety-one percent also expressed agreement with users assuming everything is free to use as being another major source of confusion.

The recommended frequency for receiving copyright training was uncertain for Q3, considering the majority did not converge on any of their proposed times from the first round. This resulted in being the only question where no consensus was found for any of the subparts, i.e. Q3a, Q3b, Q3c, etc. Notwithstanding the 80% threshold criterion for consensus, it appeared that 73% agreed the educator should be required to receive annual training. The IQR = 1.50 for Q3a (annual training) was outside the acceptable range of 0-1, but it appears eight panelists agreed this is how often online educators should be required to receiving training. Similarly, Q3c (every two to three years) had an IQR = 1.50, but only three expressed agreement while seven disagreed. The outcome was reversed for Q3d (as needed), with seven agreeing and three not; the IQR = 2.50 however, was even farther from the acceptable range.

A question relating to time limitations, Q4, was not much different in responses as compared to Q3. The only exception was a high level of consensus obtained for Q4e, where 100% of the panel agreed the duration of use for multimedia projects created with copyrighted materials should be based on fair use assessment versus a finite or infinite

time. IQR and SD were close to zero (0.50 and 0.47), which mirrored the high level of agreement. Additionally, the mode = 1 and median = 1.0 represented the original Likert category of Strongly Agree before the scale was collapsed to %Agree, %Neutral, and %Disagree. Seventy-three percent agreed the same time limits from Q4 should also apply to synchronous and asynchronous education, but an overall differing in opinion among the other 27% did not result in consensus.

Levels for all items that reached consensus were mostly high, barring two elements, Q6d and 14e, where agreement reached a reasonable or fair level. Question six asked the number of copies, including the original, an online educator should be allowed to make for a multimedia project that was created with copyrighted materials. Eighty-two percent agreed it should be based on fair use assessment (Q6d). The suggestion that no copies (Q6c) should be allowed displayed no convergence in opinion, despite an IQR = 1.00 and SD = 0.84. The majority expressed a disagreement (73%), with Strongly Disagree appearing the most. Likewise, no agreement was reached when asked if any exceptions should exist for Q6; however, the mode = 5 suggested Strongly Disagree was chosen more frequently, with 55% of the responses falling under either Disagree or Strongly Disagree.

A 100% agreement was obtained for two suggested items in Q8, what an online education faculty policy should cover for work-related downloading of multimedia content from the Internet. The suggestion to always attribute regardless where the materials are taken (Q8a) generated an IQR = 1.00 and SD = 0.50, with a mode = 1 (Strongly Agree). The person to contact for all copyright and fair use questions response resulted in an IQR = 0.00 and SD = 0.30, with a mode = 1 equally. The feedback relating

to encouraging users to link or embed rather than downloading (Q8b) and information relating to the Public Domain and Creative Commons licensing (Q8d) received the same agreement and disagreement rates of 91% and 0%. The two only differed in the middle 50% (IQR = 0.50 versus IQR = 1.00). Opinions converged on Q8c, how to conduct a fair use assessment, despite two panelists who were undecided for this item.

Respondents showed strong levels of agreement for two of the seven components of Q9, which asked the most important point an online faculty policy should emphasize regarding distribution of copyrighted works over the Internet. High consensus was achieved for Q9a and Q9c: parameters for the use of materials should be stressed, and stress that the availability to download or manipulate the materials may be outside of the copyright agreement. No panelist chose to be undecided or disagree on the two items. Variance for their responses was minimal, as evidenced by standard deviations of SD = 0.50 and SD = 0.53.

High consensus was achieved with four of the six items for Q10, what an online education faculty policy should state regarding altering copyrighted works added into a multimedia project. One hundred percent agreed the policy should include a statement to contact the copyright expert for questions. Ninety-one percent agreed that if the materials are altered, it should be stated along with the full citation to the original. Ninety-one percent also agreed that the policy should stress that academic use does not automatically mean fair use applies. Finally, 82% expressed agreement that a reminder about fair use and its four factors should be included.

Agreement was reached for two components of Q11, where panelists responded to the recent changes made in 2015 to the DMCA for access control technologies. A high

level of consensus was observed for Q11c and Q11d, where respondents suggested the changes are potentially limiting creativity and still in need of revamping. Each item received a 91% agreement, but the Q11c IQR = 0.50 versus 1.00 for Q11d; the SD = 0.60 for the former item as compared to 0.67 for the latter. Nearly half the group (45%) expressed agreement that the recent changes to the law are too cumbersome, while the opinions for the remainder 54% of responses varied between Undecided, Disagree, and Strongly Disagree. The mode = 3 suggested most of the remainder were undecided. An almost even divide was also observed for Q11b, where the comment was the recent changes are still too narrow. Forty-five percent agreed, 45% were undecided, and 9% disagreed. A mode = 3 once again represented more of an indecisiveness at this stage.

The recommended portion limitations for sampling copyrighted media in Q12 failed to converge on any of the initial suggestions of 5%, 10%, and 100%. Consensus was however achieved unanimously for Q12d, in which the panel agreed it should be based upon fair use assessment. This response resulted in a 100% agreement among the group, with IQR = 0.00, SD = 0.30, and mode = 1 which correlates with the Strongly Agree original category. No consensus was obtained for Q13; opinions were mixed when deciding whether online educators should be allowed to use up to 100% of an orphan work.

Question 14 asked for the biggest obstacle online educators will encounter in the future for fair use. High consensus was obtained for Q14b and Q14d, while just a fair level was observed for Q14e. Eighty-two percent agreed that finding an easier way to do an informed fair use analysis would be the issue, and 91% agreed the understanding of fair use would pose the biggest challenge. The response for Q14e, trying to find the

balance for authors and users of what maintains fair use, also resulted in an 82% agreement rate, but the $SD = 1.22$ yielded a fair level of consensus among the group. The only other item that came close to consensus was 14a, knowing how much material out of the total work is considered fair use. Despite $IQR = 0.50$ and $SD = 1.01$, the agreement rate of 73% did not satisfactorily meet or exceed the threshold of 80%.

Round 3 Results

A total of 12 members provided responses as compared to 11 from the previous round. Two additional items resulted in satisfactory agreement, ending the round with a total consensus rate of 26 out of 54, or 48%. Comprehensive outcome values are presented in *Table 5* (Appendix S). All consensus levels were high, unlike the two items from Round 2 (Q6d and Q14e) that originally resulted in fair. No component that reached consensus from the previous round failed to repeat. Any observed decreases in SD and IQR , or increases in %Agree and %Disagree between this and the previous round are represented in *Table 6* (Appendix T).

The two questions that reached consensus in Round 2 for all items, Q2 and Q8, did not achieve the same unanimous agreement for each subpart during this iteration. Members' opinions were divided for Q2b, the response that the most confusion for fair use in distance and online education is the assumptions that everything is free to use. The %Agreement dropped from 91% to 67%, while the IQR increased from 1.00 to 2.25. The remaining items (Q2a, Q2c, Q2d, and Q2e) continued to satisfy consensus. A lower IQR and SD were observed for Q2a, the ambiguous nature of the law, and the %Agreement remained constant at 100%. The nearing of the IQR to 0, from 1.00 to 0.25, verified most of the panel were choosing the same level of agreement, resulting in a minimal dispersion

of the data; nine members chose Strongly Agree and three selected Agree. Responses for Q2c, lack of clear guidelines, demonstrated the greatest improvements, with changes in SD from 0.79 to 0.65, IQR from 1.00 to 0.25, and %Agreement from 82% to 92%. Item Q2d, understanding the basics of works, ownership, and rights, had no statistical changes.

No movement toward agreement occurred for Q3, how often online educators should be required to receive copyright training. The biggest change observed, however, was a near doubling of the %Agreement with Q3c (every two to three years). The rate for agreeing increased from 27% to 50%, while the %Disagreement decreased from 64% to 50%. An increase in IQR from 1.50 to 2.00 for this item supported the equal divide of opinions. The response rate for Q3a (annually) remained relatively high, and increased slightly from 73% to 75% in agreement. It also appears those who originally agreed on a frequency of biannually/semiannually in the previous round for Q3b reconsidered; the %Agreement changed from 64% to 58%, with an increase in %Disagreement from 36% to 42%.

The outcome for Q4 (how long online educators should be able to use their multimedia projects created with copyrighted materials) remained virtually the same. The group agreed 100% that the answer for this question should be based on fair use assessment (Q4e). Both the IQR and SD decreased, signifying a stronger level of consensus and consistency in choosing the same response. The IQR changed from 0.50 to 0.25 and the SD from 0.47 to 0.45. Likewise, the same pattern was expressed for the follow-up question of whether the same time limits should apply to synchronous and asynchronous distance education (Q5). Agreement percentages increased from 73% to 92% for this supplemental question. Despite all the other items for Q4 demonstrating

either a decrease in SD and IQR, or minor increase in %Agreement, there was no progress made toward consensus.

Data for Q6, a copying and distribution limitations related question, displayed very little positive change. The agreed upon response that the number of copies an online educator should be allowed to make for a multimedia project created with copyrighted materials was consistent. Consensus was again observed for Q6d (should be based on fair use assessment). Percent agreement increased from 82% to 92% even though IQR increased from 0.50 to 1.00. It is significant to note that regardless of the IQR moving further from zero, the decrease in SD from 1.42 to 0.90 represented a stronger level of consensus (fair to high). Conversely, the response for Q6d (none) exhibited no change in %Agreement while %Disagreement decreased. No panelist ever chose to agree for Q6d, 0% and 0%, but disagreement fell from 73% to 67%, suggesting a few members became undecided. The increase in IQR from 1.00 to 2.00 reinforced this shift in opinions. Members were also not sure if any exceptions should exist for Q6, since no consensus was observed for Q7.

Minor changes in the responses were observed for Q8 (what an online education faculty policy should cover for work-related downloading of multimedia content from the Internet). The differences were mainly small increases in %Agreement for nearly all subparts. For example, responses for Q8b (encourage users to link or embed rather than downloading) showed an increase from 91% to 92%, while the SD remained the same and the IQR increased five tenths to 1.00. Likewise, Q8d (information relating to the Public Domain and Creative Commons licensing) resulted in the same increase in %Agreement, but the SD and IQR also each showed improvement: 0.69 to 0.62, and 1.00

to 0.00 respectively. The only item that differed was Q8a (always attribute regardless where the materials are taken). Panelists originally expressed 100% agreement, but %Agreement in this round decreased to 92%. The 0% disagreement rates for all items during both rounds suggests the other 8% became undecided for that recommendation.

It appears only one item from Q9 resulted in a significant change. Item Q9e (conduct a fair use assessment before sharing the work online) was a response for answering what the most important point an online education faculty policy should emphasize regarding distributing a multimedia project created with copyrighted materials over the Internet. The %Agreement was close to satisfying consensus in the previous round, while the IQR and SD qualified. The recommendation gained more agreement, increasing the %Agreement from 73% to 92%. No disagreements were observed for either round. Comparatively, no participant disagreed on Q9a (parameters for the use of the materials should be stressed), but the %Agreement rate did decline from 100% to 92%.

One item for Q10 (what an online education faculty policy should state regarding altering copyrighted works that were added into a multimedia project) failed to reach consensus, while two other significant occurrences were seen among the other subparts. Even though the group's %Agreement rate increased from 64% to 75%, the SD decreased from 1.45 to 1.27, and the IQR decreased from 2.00 to 1.25 for Q10b (focus on transformativeness), these improvements were not enough to satisfy the requirements for consensus. The Q10e response (academic use does not automatically mean fair use applies) changed from 91% to 100% agreement, with an improvement in IQR and SD. Item Q10f (discourage creating derivative works unless explicitly allowed by a license)

neared consensus in the previous round for disagreement. Convergence was successful this round as %Disagreement increased from 64% to 83%; not much change or no change at all was observed for IQR and SD.

Question 11—opinions on how the recent changes to the DMCA will affect online educators—did not achieve full consensus. Item Q11d (still in need of revamping) maintained satisfactory agreement for both rounds, even though %Agreement dropped from 91% to 83% in this round. Viewpoints were changed for an item that previously reached adequate agreement. Q11c (potentially limiting creativity) changed from a %Agreement of 91% to 67%, and whereas in Round 2 no one disagreed, 8% objected here. Opinions also shifted for two other items. The %Agreement for Q11a (too cumbersome) increased from 45% to 75% with no disagreements recorded. Equally, Q11b (still too narrow) displayed the exact same changes in %Agreement as Q11a.

No definite amount was decided upon for portion limitations, Q12. The majority felt it should be based upon fair use assessment (Q12d). One hundred percent agreed during Round 2, and although %Agreement decreased to 92% here, convergence was still achieved for this response. The suggested portions of 5% (Q12a) and 100% (Q12c) resulted in greater disagreement rates, each increasing from 36% to 42%. Although %Agreement decreased slightly from 27% to 25% for item Q12b (suggestion of 10%), %Disagreement also decreased from 36% to 33%, signifying a few members became undecided.

Fifty percent did not agree that an online educator should be allowed to use up to 100% of an orphan work (Q13). This represented an increase in %Disagreement from 27% to 50%, as opposed to the increase in %Agreement from 18% to 33%. Question 14

(the biggest obstacle for online educators in the future for fair use) received high consensus for four of the five suggestions, an increase of one item compared to the previous round. Question item Q14a (knowing how much material out of the total work is considered a fair use) resulted in a %Agreement increase from 73% to 92% and %Disagreement from 18% to 0%. The number in agreement for Q14d (understanding it) was the only item with a significant increase in %Agreement from 91% to 100% and decrease in IQR from 1.00 to 0.00. Opinions remained relative the same for Q14e (trying to find the balance for authors and users of what maintains fair use, with only a change in %Agreement from 82% to 83% and %Disagreement from 9% to 8%.

Summary

Data were carefully evaluated from all three rounds. Based on the results after the final round, the expert panel's opinions converged on nearly half the items when the Likert scale was collapsed from five to three categories of Agree, Neutral, and Disagree. Most item responses that underwent a change in consensus from Round 2 to Round 3 did so with a significant increase in agreement, disagreement, or level of consensus. Items with a decreasing SD or IQR further illustrated the change in strength and smaller variances from the group median.

The strongest response items for the five distinct categories are as follows:

1. Fair use in general
 - a. The ambiguous nature of the law causes the most confusion for distance and online educators
2. Time limitations

- a. Educators should be able to use projects created with copyrighted materials for no finite time if it is based on fair use assessment
- 3. Copying and distribution limitations
 - a. The number of copies the educator should be allowed to make for a project created with copyrighted works should be based on fair use assessment
 - b. A faculty policy covering work-related downloading of copyrighted multimedia content should
 - 1. Always guide users to the person to contact for all copyright and fair use questions
 - 2. Stress that a fair use assessment needs to be conducted before sharing any work online
 - 3. Make a point that academic use does not automatically mean fair use applies
- 4. Portion limitations
 - a. There should be no set percentage for how much of a copyrighted work can be incorporated into a new project; it should be based upon fair use assessment
- 5. Outlook for the future
 - a. The biggest obstacles for fair use online educators will face in the future are
 - 1. Understanding it

2. Knowing how much material out of the total work is considered fair use
3. Finding an easier way to do an informed fair use analysis

Chapter 5

Conclusions

The iterative style of the Delphi helped to identify and refine common opinions among the panel of copyright experts. Geographic diversity did not appear to make much of a difference in responses for most of the group based on the results for many of the questionnaire items. This observation implied that aside from inherent differences in policies and practices across learning institutions, the majority of copyright professionals tend to express similar viewpoints and concerns for the topic.

Issues related to technological copyright and fair use are complex, but the findings from chapters two and four provided enough perspective to answer the proposed research questions. The goal was to seek consensus on current problems and compile a list of recommendations for higher education relating to best practice. This chapter completes the process with an overall conclusion, implications of the findings in the larger context, and draft of the best practice recommendations. Finally, a summary discusses the details for the venture and lessons learned from the experience.

Conclusions

The first two research questions were satisfied at the end of a comprehensive literature review, while the Delphi panel surveying explained the others.

RQ 1: What are the effects of the legal system's inconsistencies regarding ownership and fair use of digital media on higher education copyright policies?

Abruzzi (2011), Lee (2010), and Loren (2015) describe a situation whereby a lack of standardization forces legal examiners to use their best judgement to decide

technology fair use cases. The courts use the PANE assessment as appropriate, even though the legislation was not originally drafted to include circumstances involving advanced technology. For example, Abruzzi (2011), Bartow (2003), and Ginsburg (2014) reference the *Sony Corporation v. Universal City Studios* case as a significant win for users who videotaped network broadcast television programs. Fair use was declared because the courts decided that recording a program to watch later is considered to be time-shifting and should not impact the revenue of the network company.

The extensive proceedings for the *Cambridge Press v. Georgia State University* electronic courses reserves demonstrate another example of the variations in fair use assessment. Baughman (2012) and Enghagen (2014) state the presiding district court judge used the PANE method to reach an opinion that ultimately favored Georgia State University, but she created her own arithmetic approach for weighing each factor equally. The judge suggested a ten-percent-or-one-chapter formula for determining fair use when copying academic books and making them available to online students. The publishers protested the decision, and the appellate court ultimately disagreed with the district court's methodology, declaring that fair use needs to be conducted on a case-by-case basis rather than any mathematical formulations.

Georgia State University was sued in 2008, and by 2009, Strain (2015) reports the school drafted substantial changes to its copyright policy as a good faith measurement. The most notable change was the inclusion of a fair use checklist that did not exist prior to litigations. Additional policy modifications were completed in 2012 to comply with the case ruling. Rothman (2014) identifies another policy change for New York University

after the ruling; faculty no longer need to comply with the Classroom Guidelines of 1976 that traditionally outlined minimum copying standards of fair use.

Aaron and Roche's (2015) survey of online class copyright ownership perspectives after the case yielded an 80% response that faculty should maintain exclusive copyright to all academic materials they create, across all platforms. Approximately a fourth (26%) of the faculty could not decide if they or the school should maintain ownership in the online class environment. This perception is significantly lower compared to a study by Loggie et al. (2006), where it was discovered 88% of institutions wrote policies acknowledging full faculty ownership of courseware.

RQ 2: What guidelines have been created since the original copyright laws were drafted?

Several schools have developed their own guidelines based on the copyright doctrine to maintain alignment with current trends (Courtney, 2013; Fowler & Smith, 2013; Tobin, 2014; Van Hoene, 2015). Aaron and Roche (2015) and Minnock (2014) state concern for the lag in evolution of the original copyright legislation, given that technological innovations tend to spread quickly and continue to progress. Lee (2010) and Van Hoene (2015) add that fair use for technology was never included in the first draft, despite an awareness for the potential growth in the industrial sciences. Likewise, court cases are inherently more complicated when the medium is technology related, and the pattern in education has been a greater move toward digitized materials.

The first Copyright Act was enacted in 1790 and was based on the British Parliament's earlier passing of their Statue of Anne (Baughman, 2012; Courtney, 2013; Wang, 2013). Congress has been reevaluating the document over the years to expand the scope of copyright and attempt to make accordance with the proliferation of technology,

but the last major rewrite did not occur until 1976: a clarification of the works made for hire clause and addition of the Classroom Guidelines for copying were completed (Lee, 2010; Rothman, 2014). According to Ginsburg (2014), Title 17 U.S. Code § 108 (statutory coverage for library photocopying) was updated in 1998, but rapid advances in digital technologies have exceeded the congressional efforts.

Courtney (2014) explains how President Clinton was the catalyst for the fair use guidelines published by the CONFU in November of 1998, but the efforts were not a complete success and were never enforceable as law. President Bush signed the TEACH Act on October 3, 2002 to clarify fair use specifically for distance education (Wang, 2013; White, 2013). The statute was released just four years after the DMCA amendment and has not been since updated; greater than 80% of schools have been reported to be using online or distance learning courses (Holian et al., 2014). In contrast, revisions have been made to the DMCA in 2015 to allow certain exceptions and lessen the strict bands placed on accessing technological media. (<https://www.federalregister.gov/documents/2015/10/28/2015-27212/exemption-to-prohibition-on-circumvention-of-copyright-protection-systems-for-access-control>).

RQ 3: What are the most critical steps higher education professionals should follow as best practice for fair use of multimedia in distance and online courses?

Academic leadership at different learning institutions will essentially create policies for managing copyrighting procedures, as well as the processes for resolving any potential problems the school could encounter. Each Delphi expert panelist recruited performed in the role of copyright officer, whether directly or in another format. Their responses were based on overall professional experience, current working knowledge,

and copyright policies in place at their respective schools. The open-ended questions generated from the literature helped to guide the responses, which revealed their opinions for the most critical steps that should be followed.

Fair use assessments appeared multiple times in the panel's responses. Members identified this process as being the most important and a frequent problem area for all faculty, regardless of the lesson delivery method. Therefore, best practice would involve:

- Directing faculty questions to the contact information for the person within the school's legal and copyright office. The panel ultimately suggested that faculty should be guided to the designated copyright and fair use person whenever questions arise.
- Providing instruction/resources for helping faculty properly conduct a fair use assessment. This is especially important before any online sharing or distribution of the work over the Internet. The focus should be the four factors of fair use, PANE.
- Cautioning that academic use does not automatically mean fair use applies. The best practice would be always attributing, regardless where they take the materials.
- Advising users to link or embed copyrighted items in their own presentations rather than directly downloading the source.
- Reinforcing proper fair use assessment for all multimedia types, especially when making copies of a project created with copyrighted materials. No bright-line numbers or percentages safely dictate how much of the items the faculty can use.

- Including additional information in the policy relating to the Public Domain and Creative Commons licensing to help avoid permissions seeking.

RQ 4: What is the consensus among an expert panel of education and legal professionals for the best practices?

The panel converged on multiple items by the end of the third round of questioning. Nearly half of the items (48%) achieved a high consensus—no fair or low levels were observed.

Fair Use in General and Future Outlook

Two items relating to opinions for the reason for confusion in fair use, and the biggest obstacle for fair use in the future, emerged with the strongest agreement among the group. Figure 3 depicts the comparison between the panelists' responses for those questions.

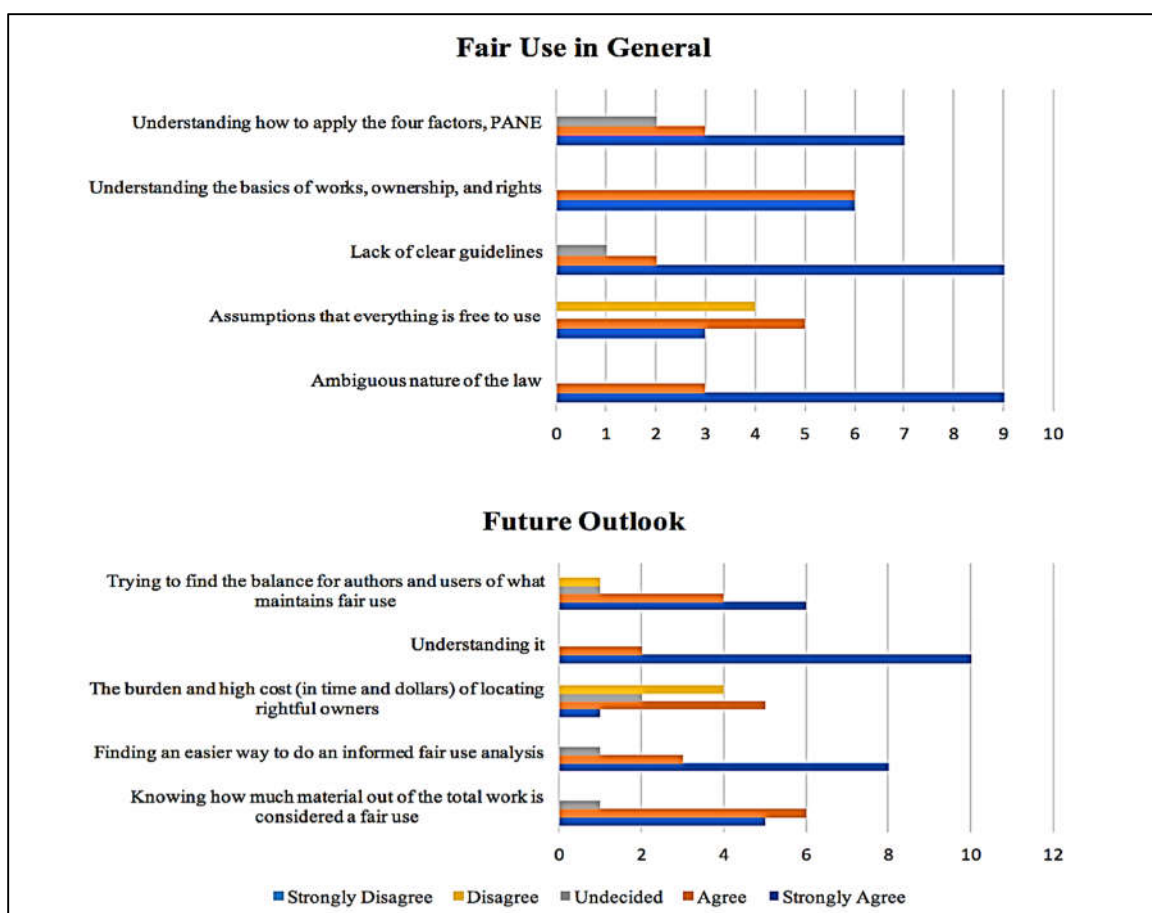


Figure 3. Comparison summary of responses to question “what is it about fair use that causes the most confusion for all distance and online educators, both fulltime and adjunct,” and statement “the biggest obstacle for online educators in the future for fair use is”.

The participants opined the ambiguous nature of the law causes the most confusion for fair use, and understanding it will be the biggest obstacle in the future. In effect, no one was undecided or disagreed with those two responses.

Time Limitations

It appears the panel originally proposed various time spans when responding to the question “how long should online educators be able to use their multimedia projects that were created with copyrighted materials for teaching?” However, consensus was

only reached for the suggestion that the time should be based on a fair use assessment.

The majority also concurred that the same fair use-assessed time limitations should also apply to synchronous and asynchronous distance education.

Copying and Distribution Limitations

According to 92% of the panel, the number of copies an online educator should be allowed to make of a multimedia project created with copyrighted materials should be based on a fair use assessment. Not enough agreement (or disagreement) to achieve consensus was recorded when they attempted to decide if any exceptions should exist to the copy limitations. Satisfactory agreement was, however, observed for all panel proposed suggestions for what an online education faculty policy covering work-related downloading of multimedia content from the Internet should include. Ranked by level of strongest agreement first, the suggestions were:

1. Person to contact for all copyright and fair use questions;
2. Information relating to the Public Domain and Creative Commons licensing;
3. Always attribute regardless where the materials are taken;
4. Encourage users to link or embed rather than downloading;
5. How to conduct a fair use assessment.

All suggestions for the next question in this category did not reach consensus. When asked what is the most important point an online education faculty policy should emphasize regarding distributing a multimedia project created with copyrighted works over the Internet, the responses ranked by strongest level of consensus were:

1. Conduct a fair use assessment before sharing the work online;
2. The parameters for the use of the materials should be stressed;

3. To make sure the work is available for the intended audience.

It is worthwhile to note the suggestion to get it cleared by the university first obtained a disagreement for over half the group.

Consensus was achieved for all but one recommendation for the question what should an online education faculty policy state in regard to altering copyrighted works that were added into a multimedia project. The rank ordered responses were:

1. Academic use does not automatically mean fair use applies;
2. Contact the copyright expert for questions;
3. A reminder about fair use and its four factors;
4. If materials are “adapted”, this fact should be stated along with a full citation to the original.

Consensus was also observed for another recommendation, but the majority disagreed with the statement: discourage creating derivative works unless explicitly allowed by a license. It is safe to assume the majority would have converged toward agreement if the suggestion had been negated. Moreover, the group reached harmony for only one of their suggested opinions relating to the recent changes in the DMCA for online educators. The panel basically agreed the law is still in need of revamping. A few members added commentary stating the changes are still too cumbersome, narrow, and are potentially limiting creativity.

Portion Limitations

Finite percentages were suggested for portion limitations for online educators who desire to incorporate copyrighted media into their courses. Consensus was only achieved for the statement that portion limitations should be based upon fair use assessment. No

agreement existed among the group when deciding whether an online educator should be allowed to use up to 100% of orphan works.

Implications

The extant literature has identified multiple questions regarding fair use of digitized materials for educators, yet little research has been conducted before now. Cotropia and Gibson (2014) recognize there is considerable uncertainty in general on how copyright cases are handled. They also acknowledge the extreme deficit in copyright litigation empirical studies and the increased difficulty these cases tend to possess. Aaron and Roche (2015) add that multiple variables inevitably will need to be addressed with online courses; these factors essentially cause copyright law to become even cloudier. Additionally, White (2013) has observed an upward trend in the number and type of online courses being offered by various learning institutions, from LMS hosted content to MOOCs.

Legislation does not always change at the same rate as technology. New advancements typically outpace any new revisions that may occur with copyright and fair use laws. The concentrated efforts of the CONFU in 1998 were neither widely accepted nor written into law (Bell & Parchomovsky, 2015; Courtney, 2014; Ginsburg, 2014; Von Hoene, 2015). Not to mention, no large-scale movement of this type has been repeated since 1998. Schools have generally created and maintained their own digital copyright and fair use guidelines, with a few organizations such as the University of Texas and Stanford University serving as the models (Courtney, 2013; Daniel, 2012; Tobin, 2014). Other organizations appear to make policy updates in the wake of highly visible, high

profile court cases such as the *Cambridge Press v. Georgia State University* lawsuit (Baughman, 2012; Enghagen, 2014).

The timeliness of this work was ideal for attempting to seek clarification in fair use for current school practices. No educator would knowingly subject himself or his employer to potential financial penalties for committing copyright infringement. A major reason for the creation of the law was to foster and perpetuate creativity. Uncertainty in what is correct behavior will not benefit the artist or the community. Clearer meaning can be sought and adopted through collaborative efforts of legal and copyright professionals. The results presented in Chapter 4 helped to answer some of the primary questions that have been circulating among educational faculty and staff.

Recommendations

The goal was to create best practice recommendations for technological fair use. All educators involved in higher learning should benefit from such proposals. Policies dictate the bounds and solutions to copyright related issues, therefore best practice recommendations can help with customizing and modifying these documents as necessary. Future examinations should focus more on policy development and faculty training initiatives. A significant deficit has been identified in studying the concerns for copyright and fair use in the educational setting. Following are the fair use recommendations. They appear as a document within a document complete with terminology and references to be of optimal value to readers.

Fair Use Recommendations for Education Multimedia Projects

Purpose

This document contains recommendations for best practices that can help educators arrive at the best decisions for using copyrighted works. It was created from the input of twelve distinguished legal and copyright experts representing different learning institutions around the country. After three rounds of surveying and questioning, the experts decided which items were of concern. The data they supplied were successfully analyzed and applied here in this narrative. Each recommendation represents the most current opinions among the participants who maintain working knowledge and competencies in the copyright laws.

Limitations/Disclaimer

Users should not consider this document to be an all-inclusive legal guide, and should consult with an attorney or copyright expert directly when faced with any persistent uncertainties. The creator is not a legal professional, and no part of this document was written to constitute legal advice. The recommendations cover only multimedia projects for educational, non-commercial purposes in non-profit schools.

Terminologies

1. CONFU – The Conference on Fair Use was a federal initiative of copyright owners and user interests in 1993 to discuss fair use issues and reach consensus for developing guidelines (www.uspto.gov/sites/default/files/documents/confurep_0.pdf).
2. Copyright – The legal ownership incentives granted to authors of original work designed to promote the continued creation of creative works (Abruzzi, 2011, p. 88).
3. Copyright infringement – The unauthorized act of making copies of copyrighted materials and distributing the materials to others without express consent (White, 2013, p. 18).
4. DMCA – Congress passed the Digital Millennium Copyright Act in 1998 in attempt to update copyright law by addressing the multiple changes in technology use brought on by the Information Age (Tobin, 2014, para. 25).
5. DRM – Digital rights management is sometimes referred to as TPM, or technological protection measures, and was created as a proprietary control mechanism for preventing unlawful access and copying of copyrighted digital information resources (<http://www.ala.org/advocacy/copyright/digitalrights>).

6. Fair use – Created as a principle in copyright law that allows others limited use of another’s copyrighted works with no need for advance permission (White, 2013, p. 23).
7. Orphan works – Materials for which the original creator or rights holder cannot be located (Samuelson, 2011, p. 481).
8. PANE – This acronym represents the four parts of fair use found in the U.S. Code: purpose, amount, nature of work, and economic impact (Tobin, 2014, para. 17).
9. TEACH Act – Congress passed the Technology, Education, and Copyright Harmonization Act in 2002 to clarify fair use for teaching environments that do not include face-to-face interactions, such as distance education (Tobin, 2014, para. 26).
10. The symbol (§) – The section mark is used when citing legal documents with numbered or lettered statutes (<http://typographyforlawyers.com/paragraph-and-section-marks.html>).

Context

Distance and online teaching methodologies have been gaining popularity among many higher learning institutions over the years. Advances in technologies and Internet use have been part of the catalyst for this interest (Aaron & Roche, 2015; Crews, 2011). Digital learning platforms are not characteristically new, but more common today. School administrators realize they can reach and serve a much more geographically diverse student population by utilizing digitized educational materials. The proliferation and widespread student use of mobile technology platforms makes virtual learning more feasible (Buskirk & Andrus, 2014; Daniel, 2012; White, 2013).

Congress initially expected the progression of technology, but when copyright laws were originally drafted in 1790, revisions since then have been slow (Aaron & Roche, 2015; Minnock, 2014). Although a major re-write was done in 1976, interpretations were still ambiguous and confusing (Lee, 2010; Rothman, 2014). Essentially, the law does not clarify how fair use should be applied in the educational setting. Technology-based fair use court cases have been determined on a case-by-case basis because no specific standards exist for litigations of this type (Abruzzi, 2011; Lee, 2010). Teachers are sometimes aware of copyright and the extent they are covered under the fair use clause, but high-profile cases like the Georgia State University copyright infringement case tend to raise concern (Baughman, 2012; Enghagen, 2014; Bell & Parchomovsky, 2015).

Title 17 U.S. Code § 106 specifically covers what an author of a work should expect regarding protection (Aaron & Roche, 2015; Abruzzi, 2011; Baughman, 2012). Educators are usually practicing safely when borrowing from the original author if they conduct the proper PANE assessment. Those who desired to share and upload their creations gained protection from the passing of the DMCA in 1998 (Ryan & Ferullo, 2011; Tobin, 2014). Congress has recently lessened some of the DRM restrictions that have been problematic

for many users. Distance education professionals were provided coverage with the TEACH Act of 2002, and the CONFU project of 1993 was the last comprehensive attempt to create technology standards, although the results were never widely accepted or added to legislation (Bell & Parchmovsky, 2015; Courtney, 2014; Nenych, 2011; Van Hoene, 2015).

Summary of Principles

The following comments were collected from the participants in November 2016:

A. Fair Use in General

1. No one, not even a trained lawyer, can appropriately gauge a fair use case or scenario without first understanding the fundamentals of U.S. copyright law.
2. This is a recurring mistake: people go right to fair use analysis without learning the basics about works, ownership, and rights.
3. The inability of people to understand the rest of copyright law causes the most confusion for educators when trying to understand fair use.
4. Educators confuse Fair Use with the Teach Act and Section 110 (face to face and virtual) of the Copyright Act.
5. Some educators (falsely) believe that the LMS or online version of their class is an extension of the physical classroom.
6. Instructors don't know enough about Fair Use to do a fair use analysis.
7. The ambiguity and flexibility which, ironically, is one of its strengths.
8. Most just assume it's an open license to do what they want.
9. I think the idea between authorship and ownership are often blurred.

B. Time Limitations

1. If using FU, analysis should be done on a term by term basis. If licensed, then for as long as the license permits.
2. Length of usage should be based on a Fair Use assessment and risk analysis.
3. I think the permission to use copyrighted materials should be established prior to the creation of the learning object and the timeline for the use of the copyrighted materials determined from the point that permission is granted.
4. As long as they continue to be pedagogically relevant; time is not/should not be a limit on fair uses that meet the four factors.
5. Assuming they got appropriate permissions – forever.
6. Fair use if analyzed properly qualifies regardless of synchronous [distance learning] or not.

C. Copying and Distribution Limitations

1. One archival copy is reasonable.

2. No 'copies' should be made. The material should be streamed or shown to students in a manner in which they cannot copy and redistribute it.
3. No bright line number [for number of copies allowed] – consider fair use.
4. I don't think the amount of copies matters as long as it is in keeping with initial agreement between copyright holder and the person asking permission.
5. There should be a 'fair use' analysis for each type of copy or each particular 'use'.
6. If under Fair use, enough to make them available to all students. If not under Fair Use...none.
7. Use Open Access content and/or linking and embedding.
8. Creation and distribution are different questions, each of which must be analyzed – separately – under the four factors. Technological protection mechanisms will be particularly important with respect to the latter.
9. Presume everything is protected by copyright.
10. If you didn't make it, don't have permission to share it, or it doesn't have a Creative Commons license, you need to do a Fair Use analysis to determine if sharing the work online is fair.

D. Portion Limitations

1. As much as is necessary for the pedagogical purpose, taking into account the four factors.

E. Future Outlook (The biggest obstacle for fair use)

1. Knowing how much material out of the total work is considered a fair use.
2. I don't know that it will be much different than what it is today – determining how much is too much, i.e., how much can be used without infringing.
3. Understanding it.
4. Lack of knowledge of copyright law overall.
5. Getting educated about fair use, finding an easier way to do an informed fair use analysis, and getting the help that they need.
6. I think the biggest obstacle will be trying to find the balance of what maintains fair use so that it is fair to the author (no one else is profiting off the material or taking money away from the copyright holder) and still offers a method to share the work in a manner that make it accessible and current to users.
7. Fair Use is too expensive and difficult for full time faculty. Given the scope of material available (YouTube grows by ~50 hrs per minute) it's impossible to administer the balancing test.
8. Because of the increasing restrictions placed on educators by publishers and other copyright holders, there is an increase in the fees associated with

use and there will be a more proactive approach to prevent violations on copyright.

Recommendations

It is incumbent on faculty to cite and give credit to the original authors of any work used in an educational project. Such ethics play a vital part in professionalism, and this practice is paramount to the PANE assessment. If any copyrighted materials are altered, this fact should be stated along with a full citation to the original. No exception should exist, even for orphan works; one can simply state “author unknown”. Academic use does not automatically mean fair use applies.

Begin the faculty copyright policy with a clear statement regarding what the original copyright doctrine was designed to cover. Guide users to the designated copyright and fair use person whenever questions arise. Provide users with instructions and resources for properly conducting a fair use assessment using the PANE acronym. Users should be reminded frequently about fair use and its four factors.

Topic #1: Time Limitations

The CONFU policy allocated a period of up to two years after the first time an educator used their projects created with other copyrighted works.

If fair use assessments are being conducted, the educator would be considered following the best practice for minimizing problems.

Topic #2: Copying and Distribution

The CONFU policy suggested an educator can only make a limited number of copies (including the original) of a multimedia teaching project, and cautioned the practice of downloading digital copyrighted material from the Internet. Users are reminded to give credit to the original sources and include any copyright information on the opening screen of their multimedia projects. They are advised to seek permissions if the project is disseminated to a broader audience. Any alterations to the copyrighted portions need to be documented. Licenses and other contractual obligations will never be preempted by fair use.

The number of copies should be based on fair use assessments. The educator should presume everything is copyright protected, and always link or embed copyrighted items in their presentations instead of downloading the original source. The availability to download or manipulate the materials may be outside of the copyright agreement. Educators can also consider using Open Access materials instead. As an option, copyrighted materials should be streamed to mitigate the potential for student downloading and redistributing. Faculty should be provided information relating to the Public Domain and Creative Commons licensing to avoid permissions seeking. Educators should always attribute regardless where the materials are taken.

Topic #3: Portion Limitations

The CONFU policy suggested a breakdown for the different types of multimedia:

- *Motion media* = Up to 10% or 3 minutes, whichever is less
- *Text material* = Up to 10% or 1,000 words, whichever is less
- *Music, lyrics, and music video* = Up to 10%, but no more than 30 seconds
- *Illustrations and photographs* = Difficult to define, but no more than 10% or 15 images, whichever is less of a published collective work
- *Numerical data sets* = Up to 10% or 2,500 fields or cell entries, whichever is less

Portion limitations for faculty who desire to incorporate copyrighted media into their courses should be based upon fair use assessment.

Conclusion

The scope of the recommendations listed here does not cover all aspects of fair use for multimedia. These suggestions were gathered over a period of two months to add perspective to the ongoing confusion in higher education. Geographical diversity provided an excellent foundation for collecting opinions from various copyright experts and attorneys working at multiple colleges and universities around the country. As technology continues to shape the way educators plan and deliver their lessons, the community would benefit greatly from continued research in this area to help provide clearer guidelines.

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Summary of Dissertation

The idea for this endeavor began with an exploration into copyright law in distance education, from the lens of the online program administrator. Success of online and distance programs in education is often closely linked to the quality and efficacy of the campus leadership team (Holian et al., 2014; Zweig et al., 2015). Strategic planning sessions are necessary to create policy guidelines to help avoid conflicts and improve process flow. Otherwise, a learning institution will be more susceptible to failing all its stakeholders; substantial financial penalties could be possibly incurred as a result (Ferris, 2012; Rothman, 2014; White, 2013). Regardless the school setting, deficiencies in policy planning will elicit undesired effects and create additional problems.

Many questions were discovered during the exploration, mainly due to the imprecise and ambiguous interpretations of copyright law for the faculty. Teachers in any organization are an asset and are usually accountable for lesson creation and delivery. These same responsibilities transfer into the virtual learning environment (Dames, 2013; Holian et al., 2014). Successful online learning programs usually demonstrate careful planning while considering the needs of the faculty. Multiple performance problems often arise when faculty and staff do not have a clear path or understanding of copyright principles (Lee, 2010; Ferriss, 2012; Tobin, 2014).

Online learning and technology are tightly coupled. Essentially, the advances in courseware, Internet, and mobile devices have facilitated the expansion of this learning platform. It would be challenging for a school to provide coursework to its non-campus-based students in real time or otherwise without seeking some type of electronic mediated system (Ncube, 2011; Porter, 2013; White, 2013). A simple network could meet the

needs for smaller schools, but other larger institutions may require a more sophisticated system to deliver courses. Library reserves are mostly digitized and the staff tend to share the same concerns. Despite the size, copyright and fair use questions have been introduced and unanswered for many organizations (Courtney, 2013; Enhagen, 2014; Ferriss, 2012).

Copyright could arguably be one of the largest concerns for many learning institutions around the world. The laws are slow to change; however, the potential barriers continue to grow. Guided by the constant change in technology, faculty and staff must remain compliant with the law—the alternative is risking a lawsuit. It appears the primary problem many educators experience is how to properly assess fair use, especially when distributing the newly created project throughout the Internet (Enhagen, 2014; Minnock, 2014; Wang, 2013). Consequently, many schools simply may not be fully prepared to manage or mitigate copyright and fair use problems that arise on their campuses.

A continued review of the literature informed that the government has in fact made changes to the copyright laws over the years. The dilemma created is that no one still has clearly defined who owns the intellectual property a teacher creates (Aaron & Roche, 2015; McPherson & Bacow, 2015; Porter, 2013; White, 2013). The problem is magnified for online learning environments. It also becomes difficult to find a solution because ownership appears to originate from individual perspectives. Schools may assert their authorities and claim all faculty creations, or attempt to negotiate some form of sharing (Abruzzi, 2011; White, 2013). In the end, the goal should be to offer the author enough incentive to continue creating works that will benefit the general public good.

A pattern was eventually discovered in the literature. Concerns relating to how much copying of a copyrighted work is allowable appeared the most. Many instances of quantifiable amounts were encountered. For example, different institutions cautioned their faculty and staff to limit copying to 10%, with only few exceptions. Multimedia is diverse, therefore the existing policies typically provided an itemized account for text, motion media, music, lyrics, music videos, illustrations, photographs, computer software, databases, numerical data sets, etc. It was not uncommon to read statements in the schools' copyright guidelines that warned users to take the advice with precaution. This was usually related to the fact the school incorporated the suggested guidelines from the CONFU project of 1998, an effort that neither achieved complete acceptance, nor was written into legislation. Interestingly, the 10% rule for fair use has never been formally written anywhere in the copyright law (Tobin, 2014).

Few studies had been conducted on copyright policy, and those were typically related to litigation rates. Fair use in education, more specifically online and distance education, has not been thoroughly investigated. The closest investigations involving copyright law and colleges were instances where library staff surveyed the faculty for their general knowledge of the law (Ferriss, 2012; White, 2013). The conclusion was that it was doubtful anybody possessed a very good working knowledge of copyright, with only 30% of the faculty correctly answering the basic questions. Thus, competency assessment and copyright skills improvement are burdens usually reserved for the librarian or copyright officer.

The literature provided more than enough cases and arguments as to why an investigation into this problem would be beneficial for educators today. Digitized

learning materials create a new challenge for teachers; fair use practice in the traditional classroom setting was already described as unclear and ambiguous. The last large-scale effort from the CONFU helped to provide the foundation. A Delphi approach was advised to seek answers from a diverse panel of experts over a course of three rounds. The CONFU participants convened on multiple days and offered their professional opinions in a manner similar to the Delphi methodology. The CONFU results helped to create the necessary research questions. A comparison of results would provide insight into the current state of fair use.

A survey instrument was designed and validated in the beginning of the process with the assistance of a separate group of subject matter experts. Participant interest was better than expected. Further, the panel attrition rate was very low, with one member asking to be withdrawn after the first round. Data collection proceeded on schedule, and turnaround times between rounds was minimal. The candid responses from each member helped to identify common themes from the first round, which guided the remaining rounds. Feedback from the panel regarding the end results summary was minimal.

The best practice recommendations generated from the Delphi are a step in helping to alleviate some of the uncertainty many faculty and staff may experience in online and distance education. The results demonstrated an overall common message that proper fair use assessments are the key to minimizing copyright conflicts. All the details uncovered would ideally need to be examined further and tested against different possible scenarios. As written in the disclaimer, the recommendations are not comprehensive, but instead are representative of the most common concerns many teachers face today.

Additional answers are necessary to help guide higher education on proper copyright etiquette and promote a better understanding.

Appendix A

IRB Approval



NOVA SOUTHEASTERN UNIVERSITY
Institutional Review Board

MEMORANDUM

To: **Jerry L Roper, MEd**
College of Engineering and Computing

From: **Ling Wang, Ph.D.,**
Center Representative, Institutional Review Board

Date: **May 26, 2016**

Re: **IRB #: 2016-197; Title, "Copyright Policy Interpretation and its Effects on Higher Education Online Courses Success"**

I have reviewed the above-referenced research protocol at the center level. Based on the information provided, I have determined that this study is exempt from further IRB review under **45 CFR 46.101(b) (Exempt Category 2)**. You may proceed with your study as described to the IRB. As principal investigator, you must adhere to the following requirements:

- 1) **CONSENT:** If recruitment procedures include consent forms, they must be obtained in such a manner that they are clearly understood by the subjects and the process affords subjects the opportunity to ask questions, obtain detailed answers from those directly involved in the research, and have sufficient time to consider their participation after they have been provided this information. The subjects must be given a copy of the signed consent document, and a copy must be placed in a secure file separate from de-identified participant information. Record of informed consent must be retained for a minimum of three years from the conclusion of the study.
- 2) **ADVERSE EVENTS/UNANTICIPATED PROBLEMS:** The principal investigator is required to notify the IRB chair and me (954-262-5369 and Ling Wang, Ph.D., respectively) of any adverse reactions or unanticipated events that may develop as a result of this study. Reactions or events may include, but are not limited to, injury, depression as a result of participation in the study, life-threatening situation, death, or loss of confidentiality/anonymity of subject. Approval may be withdrawn if the problem is serious.
- 3) **AMENDMENTS:** Any changes in the study (e.g., procedures, number or types of subjects, consent forms, investigators, etc.) must be approved by the IRB prior to implementation. Please be advised that changes in a study may require further review depending on the nature of the change. Please contact me with any questions regarding amendments or changes to your study.

The NSU IRB is in compliance with the requirements for the protection of human subjects prescribed in Part 46 of Title 45 of the Code of Federal Regulations (45 CFR 46) revised June 18, 1991.

Cc: **Gertrude Abramson, Ed.D.**

Appendix B

Delphi Panel Background and Qualifications Survey

Delphi Panel Member Information

Thank you for agreeing to participate in this study, A Heuristic Approach to Creating Technological Fair Use Guidelines in Higher Education. For study validation, please complete this brief survey of your experience. Your answers are kept private and confidential and will never be revealed to any of the other panelists. If there are any items you do not feel comfortable answering, please skip them.

Part 1: Background

The following questions will cover demographics, skills, and experience.

1. Name

2. Your job title:

3. Describe your present job.

- ☐ Full-time
- ☐ Part-time
- ☐ Adjunct
- ☐ Other, please specify

.....

4. Currently, what is/are your highest educational degree(s) earned?

- ☐ Bachelor's degree
- ☐ Master's degree
- ☐ Law degree (LLM or JD)
- ☐ EdD or PhD
- ☐ Other, please specify
.....

5. How many years of experience do you have in your profession?**6. How many years have you worked professionally for your current employer?****7. Does your organization offer online courses that are managed with an LMS (Learning Management System) like Blackboard, Moodle, or any other custom system?**

- ☐ Yes
- ☐ No
- ☐ Unsure

8. Have you ever taught an online or distance course?

- ☐ Yes
- ☐ No

9. Do you have experience in creating online or distance courses for any group size?

- ☐ Yes
- ☐ No

10. Does your organization have a policy in place concerning copyright issues?

- ☐ Yes
- ☐ No
- ☐ Unsure

11. Have you ever received training on copyright policies in education?

- ☐ Yes
- ☐ No

12. If you have received training on copyright policies, how long ago was it?

- ☐ < 1 yr.
- ☐ 1 - 3 yrs.
- ☐ > 3 yrs.
- ☐ N/A

13. How often do you review or receive training on copyright policies?

- ☐ Every semester
- ☐ Every year
- ☐ Never
- ☐ Other, please specify
.....

14. Have you ever conducted training on copyright policies in education?

- ☐ Yes
- ☐ No

15. If you have you conducted training on copyright policies in education, how often?

- ☐ Every semester
- ☐ Every year
- ☐ As needed
- ☐ N/A
- ☐ Other, please specify
.....

16. Are you familiar with the concept of fair use of copyrighted material?

- ☐ Yes
- ☐ No

17. Do you know what a work-for-hire or work made for hire agreement is?

- ☐ Yes
- ☐ No

Part 2: Qualifications

The following statements cover your perceptions.

18. If questions concerning copyright arise, I know where to go for help interpreting the policy.

Completely disagree

☐

Generally disagree

☐

Generally agree

☐

Completely agree

☐

19. If questions concerning copyright arise, I feel confident in the training I received.

Completely disagree

☐

Generally disagree

☐

Generally agree

☐

Completely agree

☐

20. I am a resource for any of my colleagues who may have questions regarding copyright.

Completely disagree

☐

Generally disagree

☐

Generally agree

☐

Completely agree

☐

Part 3: Informed Consent Document

21. Please enter a mailing address to send a postage paid consent form.

Appendix C

U.S. Department of Education Regional Accreditation Maps

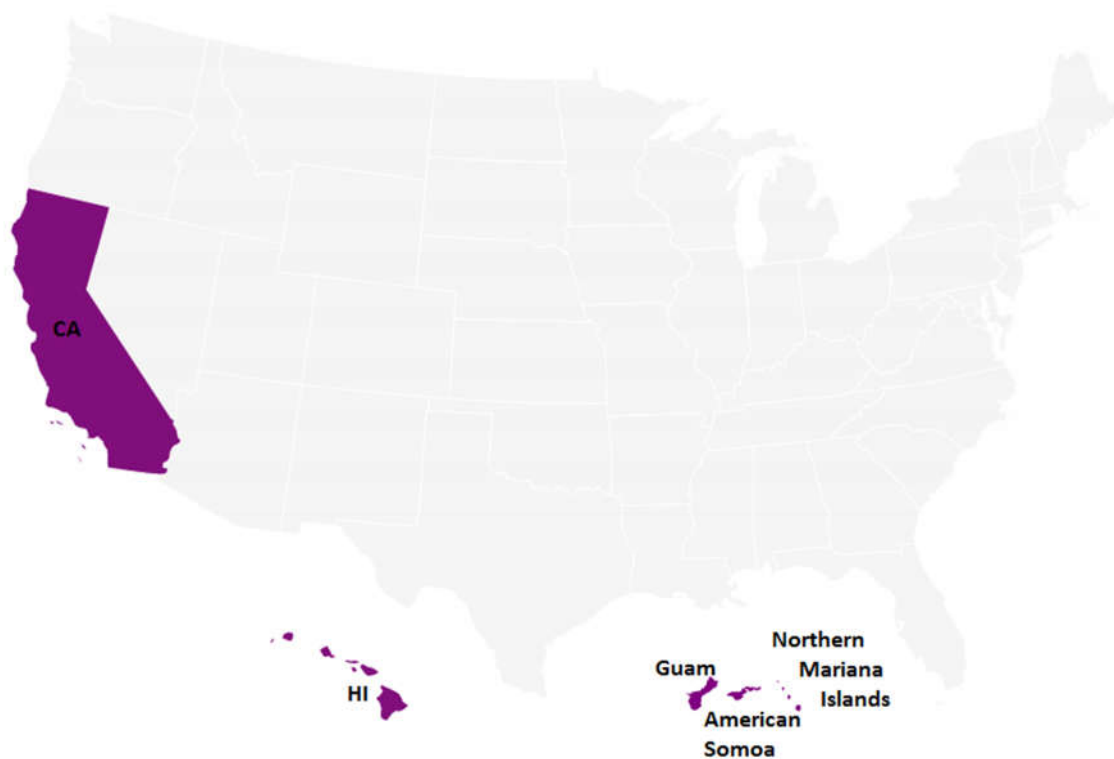


Figure C1. Territory covered by the Western Association of Schools and Colleges.
Retrieved from <https://ope.ed.gov/accreditation/agencies.aspx>

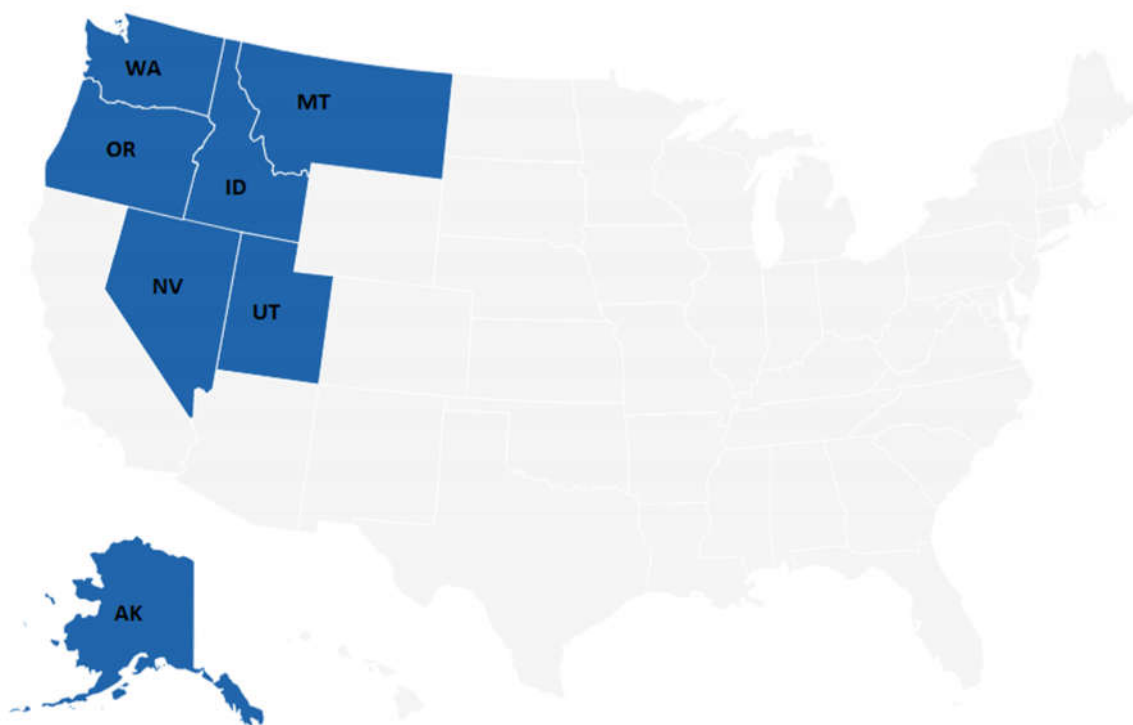


Figure C2. States covered by the Northwest Accreditation Commission. Retrieved from <https://ope.ed.gov/accreditation/agencies.aspx>

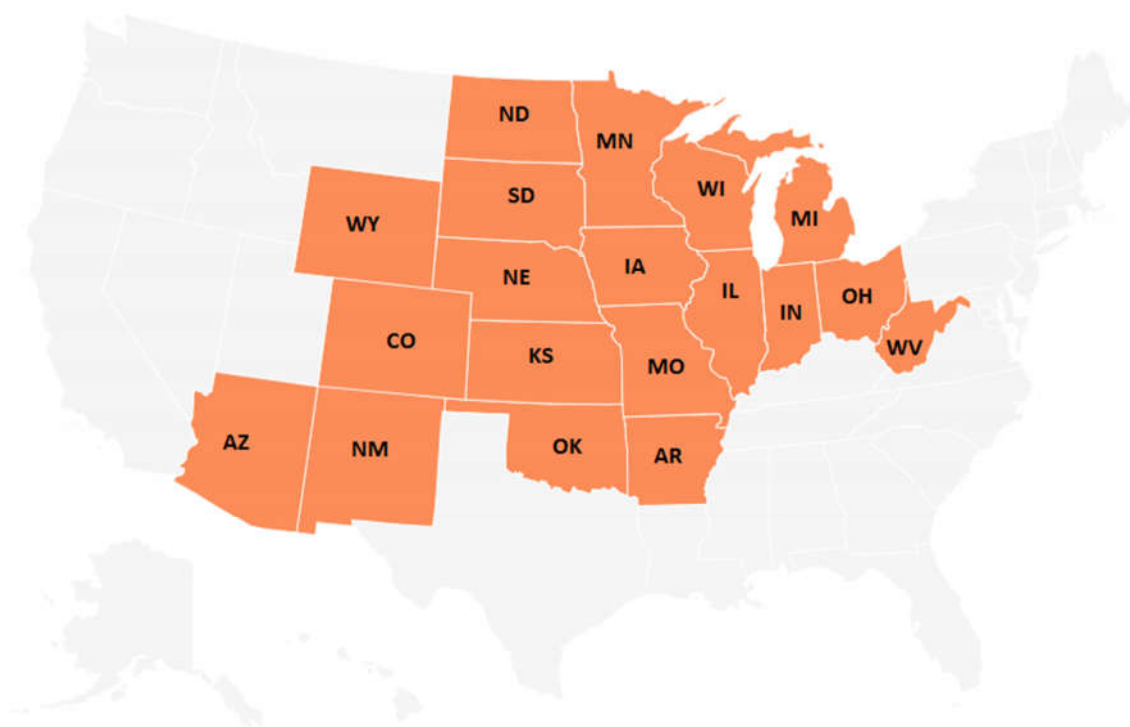


Figure C3. States covered by the North Central Association of Colleges and Schools.
Retrieved from <https://ope.ed.gov/accreditation/agencies.aspx>

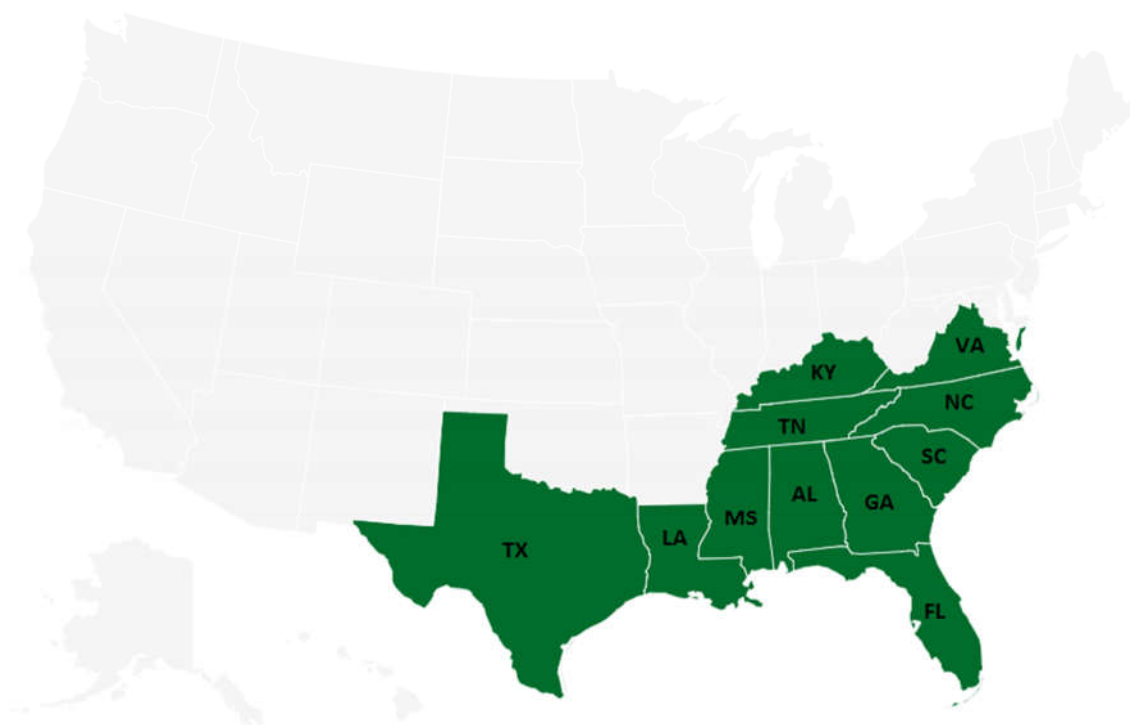


Figure C4. States covered by the Southern Association of Colleges and Schools.
Retrieved from <https://ope.ed.gov/accreditation/agencies.aspx>

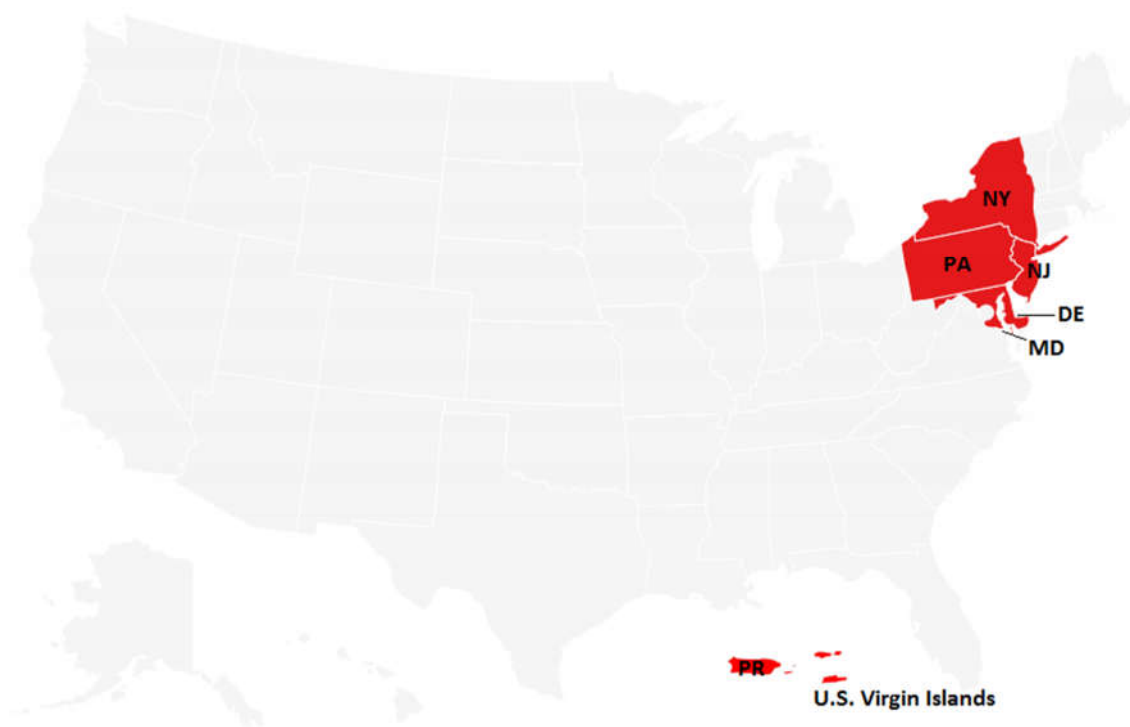


Figure C5. Territory covered by the Middle States Association of Colleges and Schools.
Retrieved from <https://ope.ed.gov/accreditation/agencies.aspx>



Figure C6. States covered by the New England Association of Schools and Colleges.
Retrieved from <https://ope.ed.gov/accreditation/agencies.aspx>

Appendix D

Delphi Panel Recruitment Email

Subject: Seeking Help for Copyright Issue in Academia

Dear _____:

I am completing a doctoral dissertation in Computing Technology in Education at Nova Southeastern University under the advisement of Dr. Gertrude “Trudy” Abramson. The study is entitled “A Heuristic Approach to Creating Technological Fair Use Guidelines in Higher Education.” The plan is to execute the study using a modified Delphi approach with the help of a panel of copyright experts. If this is not of interest or you are unable to participate, and you know of someone else you can refer, I would greatly appreciate it if you can forward this email along. The project is summarized as follows.

What is a Delphi study?

The Delphi technique is a systematic inquiry designed to seek consensus on the opinions of an expert panel of members over a set of rounds. The data is collected via a series of structured questionnaires, with the responses from each round of questioning being summarized and fed back to the panelists. This feedback allows participants the opportunity to respond again or revise their initial responses to add to the emerging data. Essentially, the Delphi is an iterative, multi-stage process designed to combine group opinion into group consensus.

What is the purpose of the study?

The dispute over copyright and fair use has existed for years in education. Many educators simply do not fully understand the limits of copyright when planning courses despite the method for lesson delivery. The problem is transition to online courses for many colleges and universities may be negatively affected if the faculty are fearful of violating copyright; this apprehension can ultimately impact future technology designs and creativity for virtual learning.

The goal is to use a Delphi expert panel to develop a set of best practices, technology-based copyright recommendations for higher learning institutions involved in designing and delivering online course materials.

Why have you been invited to take part?

You are receiving this invitation to participate because of your expertise with copyright policy and your professional involvement and association with technology and education. As an established expert in the field, it would be keen to gain your perspective on this topic. I could really use your insight and opinions to meet this study’s goal.

What will be asked of you if you decide to volunteer?

The study will begin in early November of this year and conclude by mid-December. You will be expected to complete three rounds of questionnaires, with each taking approximately 10 – 15 minutes to finish. Feedback for the questionnaires will be provided after each round, with the anticipation of a group consensus by the third round. Further details and instructions will be provided before beginning the first round.

Confidentiality and Data Protection

Each participant will remain anonymous; personal information will not be divulged to the group. Questionnaire responses will be collected online using a quality-assured, enterprise-level survey hosting company using the latest encryption algorithms. Further information regarding information security is available from: <https://www.checkmarket.com/blog/checkmarket-2-step-verification>. Additionally, a copy of the Informed Consent document will be included with the preliminary background survey for your review.

What is the next step if you are interested?

Thank you for taking the time to consider participating in this research. If you are able and willing to volunteer as an expert panel member, please respond to this email with your intentions and complete the preliminary background and qualifications survey using the link below.

Background Survey Link: <http://tinyurl.com/delphi-background>

If you have any questions or concerns, please do not hesitate to ask. I look forward to hearing from you soon.

Most Sincerely,

Jerry Roper
323-308-0155
jr1912@nova.edu

Appendix E

Delphi Round 1 Questionnaire

Technological Fair Use: Delphi Round 1

Thank you for agreeing to participate in this Delphi survey for determining the best practice of multimedia fair use in higher education. This research is an attempt to create recommendations to lessen the confusion online educators sometimes experience when using copyrighted materials. This survey round is the first of up to three rounds of the process. Please try to answer all questions with as much detail as possible. You will always have the opportunity to revise your answers with subsequent rounds.

Opinions

The following questions will ask for your viewpoints.

1. What is it about fair use that causes the most confusion for all online educators, both full-time and adjunct?

2. How often should all online educators be required to receive copyright training?

3. How long should online educators be able to use their multimedia projects that were created with copyrighted materials for teaching?

4. Should your response from Question #3 also apply to distance education? Why or why not?

5. How many copies, including the original, should an online educator be allowed to make for a multimedia project that was created with copyrighted materials?

6. Should there be any exceptions to your response to Question #5? If so, what should be the exception(s)?

7. What should an online faculty policy for downloading multimedia content from the Internet cover?

8. What should an online education faculty policy state in regard to distributing a multimedia project created with copyrighted works over the Internet?

9. What should fair use portion limitations be (in either minutes or percentage) for online educators who would like to incorporate the following copyrighted media into their courses?

Computer software

Illustrations and photographs

Motion media

Musical works, lyrics, and music videos

Numerical data sets

Text material

10. What will be the biggest obstacle for online educators in the future for fair use?

Appendix F

Delphi Round 2 Questionnaire

* 1. Please select your participant ID:

- ☐ CF-001
- ☐ CF-002
- ☐ CF-003
- ☐ CF-004
- ☐ CF-005
- ☐ CF-006
- ☐ CF-007
- ☐ CF-008
- ☐ CF-009
- ☐ CF-010
- ☐ CF-011
- ☐ CF-012
- ☐ CF-013
- ☐ CF-014
- ☐ CF-015

Fair Use in General

2. What is it about fair use that causes the most confusion for all distance and online educators, both full-time and adjunct?

	Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
Ambiguous nature of the law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Assumptions that everything is free to use	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lack of clear guidelines	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Understanding the basics of works, ownership, and rights	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Understanding how to apply the four factors, PANE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. How often should online educators be required to receive copyright training?

	Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
Annually	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Biannually/semiannually	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Every two to three years	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
As needed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Time Limitations

4. How long should online educators be able to use their multimedia projects that were created with copyrighted materials for teaching?

	Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
One academic year	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Two to three years	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Duration of teaching	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indefinitely	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Should be based on fair use assessment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

5. The same time limits from Question #4 should also apply to synchronous and asynchronous distance education.

Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

6. How many copies, including the original, should an online educator be allowed to make for a multimedia project that was created with copyrighted materials?

	Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
None	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Should be based on fair use assessment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

7. No exceptions should exist for the copy limitation from Question #6.

Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

8. What should an online education faculty policy cover for work-related downloading of multimedia content from the Internet?

	Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
Always attribute regardless where the materials are taken	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Encourage users to link or embed rather than downloading	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
How to conduct a fair use assessment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Information relating to the Public Domain and Creative Commons licensing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Person to contact for all copyright and fair use questions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

9. What is the most important point an online education faculty policy should emphasize, in regard to distributing a multimedia project created with copyrighted works over the Internet?

	Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
Parameters for the use of the materials should be stressed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Make sure the work is available for the intended audience	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stress that the availability to download or manipulate the materials may be outside of the copyright agreement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Get it cleared by the university first	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Conduct a fair use assessment before sharing the work online	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The importance of obtaining copyright permission	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Faculty members are financially liable for their actions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

10. What should an online education faculty policy state in regard to altering copyrighted works that were added into a multimedia project?

	Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
If materials are 'adapted', this fact should be stated along with a full citation to the original	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Focus on transformativeness	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Contact the copyright expert for questions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
A reminder about fair use and its four factors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Academic use does not automatically mean fair use applies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Discourage creating derivative works unless explicitly allowed by a license	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

11. For online educators, the recent changes to the DMCA are:

	Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
Too cumbersome	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Still too narrow	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Potentially limiting creativity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Still in need of revamping	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hard to enforce and have a detrimental impact on the use of copyrighted materials	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Unworkable and would seriously (and negatively) affect the current and appropriate balance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Portion Limitations

12. Portion limitations for online educators who would like to incorporate copyrighted media into their courses should be:

	Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
5%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
100%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Based upon fair use assessment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

13. An online educator should be allowed to use up to 100% of an orphan work since the original owner cannot be located.

Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Future Outlook

14. The biggest obstacle for online educators in the future for fair use is:

	Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
Knowing how much material out of the total work is considered a fair use	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Finding an easier way to do an informed fair use analysis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The burden and high cost (in time and dollars) of locating rightful owners	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Understanding it	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trying to find the balance for authors and users of what maintains fair use	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

15. If you have anything further to add, please comment.

Appendix G

Delphi Round 3 Questionnaire

* 1. Please select your participant ID:

- ☐ CF-001
- ☐ CF-002
- ☐ CF-003
- ☐ CF-004
- ☐ CF-005
- ☐ CF-006
- ☐ CF-007
- ☐ CF-008
- ☐ CF-009
- ☐ CF-010
- ☐ CF-011
- ☐ CF-012
- ☐ CF-013
- ☐ CF-014
- ☐ CF-015

Fair Use in General

2. What is it about fair use that causes the most confusion for all distance and online educators, both full-time and adjunct?

	Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
Ambiguous nature of the law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Assumptions that everything is free to use	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lack of clear guidelines	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Understanding the basics of works, ownership, and rights	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Understanding how to apply the four factors, PANE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. How often should online educators be required to receive copyright training?

	Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
Annually	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Biannually/semiannually	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Every two to three years	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
As needed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Time Limitations

4. How long should online educators be able to use their multimedia projects that were created with copyrighted materials for teaching?

	Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
One academic year	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Two to three years	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Duration of teaching	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indefinitely	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Should be based on fair use assessment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

5. The same time limits from Question #4 should also apply to synchronous and asynchronous distance education.

Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

6. How many copies, including the original, should an online educator be allowed to make for a multimedia project that was created with copyrighted materials?

	Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
None	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Should be based on fair use assessment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

7. No exceptions should exist for the copy limitation from Question #6.

Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

8. What should an online education faculty policy cover for work-related downloading of multimedia content from the Internet?

	Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
Always attribute regardless where the materials are taken	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Encourage users to link or embed rather than downloading	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
How to conduct a fair use assessment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Information relating to the Public Domain and Creative Commons licensing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

9. What is the most important point an online education faculty policy should emphasize, in regard to distributing a multimedia project created with copyrighted works over the Internet?

	Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
Parameters for the use of the materials should be stressed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Make sure the work is available for the intended audience	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stress that the availability to download or manipulate the materials may be outside of the copyright agreement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Get it cleared by the university first	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Conduct a fair use assessment before sharing the work online	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The importance of obtaining copyright permission	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Faculty members are financially liable for their actions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

10. What should an online education faculty policy state in regard to altering copyrighted works that were added into a multimedia project?

	Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
If materials are 'adapted', this fact should be stated along with a full citation to the original	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Focus on transformativeness	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Contact the copyright expert for questions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
A reminder about fair use and its four factors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Academic use does not automatically mean fair use applies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Discourage creating derivative works unless explicitly allowed by a license	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

11. For online educators, the recent changes to the DMCA are:

	Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
Too cumbersome	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Still too narrow	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Potentially limiting creativity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Still in need of revamping	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hard to enforce and have a detrimental impact on the use of copyrighted materials	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Unworkable and would seriously (and negatively) affect the current and appropriate balance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Portion Limitations

12. Portion limitations for online educators who would like to incorporate copyrighted media into their courses should be:

	Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
5%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
100%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Based upon fair use assessment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

13. An online educator should be allowed to use up to 100% of an orphan work since the original owner cannot be located.

Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Future Outlook

14. The biggest obstacle for online educators in the future for fair use is:

	Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
Knowing how much material out of the total work is considered a fair use	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Finding an easier way to do an informed fair use analysis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The burden and high cost (in time and dollars) of locating rightful owners	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Understanding it	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trying to find the balance for authors and users of what maintains fair use	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

15. If you have anything further to add, please comment.

Appendix H

Email Recruiting Subject Matter Experts

Subject: Seeking Help with Copyright in Academia

Dear _____:

I am completing a doctoral dissertation at Nova Southeastern University under the advisement of Dr. Gertrude “Trudy” Abramson. The study is entitled “A Heuristic Approach to Creating Technological Fair Use Guidelines in Higher Education.” The target population will be faculty and staff from various colleges and universities across the country. The goal is to develop a set of best practices, technology-based copyright recommendations for higher learning institutions involved in designing and delivering online course materials.

I could use your expertise with helping to validate my survey instrument. For example, does it look like a standard questionnaire one would typically find elsewhere, does the instrument appear to measure what it was designed for, is it adequately representative of the content, does it appear to be appropriate for my intended target population, and is it thorough enough to capture the information necessary would be some of the main questions. Additionally, I would greatly appreciate any other input you can provide.

I am currently in the Proposal stage of the process, and am working toward securing IRB approval to conduct the study. If you are able to spare the time to provide me feedback, I will gladly share the survey instrument I created. The only other item(s) I would need for study validation is a vita and/or short biography that summarizes your qualifications.

Thank you in advance if you are willing and able to help with finding a potential solution to the ambiguous copyright rules that continue to exist in our higher education institutions.

Sincerely,

Jerry Roper

Appendix I

Subject Matter Experts' Confirmation to Assist

RE: Seeking Help with Copyright in Academia

KS

Kevin Smith <kevin.l.smith@duke.edu>

Reply all

To:

Jerry Roper;

2/1/2016

Inbox

You replied on 2/1/2016 11:16 AM.

Dear Mr. Roper,

I would be happy to help with your project. As I understand it, you would like me to take the survey and to give you feedback on it as well. Is that correct?

What is the turnaround time on this? It does not sound especially time-consuming, but the next three weeks are particularly intense in my teaching schedule. I will do my best, but want to make sure that I meet any deadline you are facing.

Best regards,

Kevin

Kevin L. Smith
Director, Copyright & Scholarly Communication
Duke University Libraries

Re: Seeking Help with Copyright in Academia

BA

Bruce Abramson <bdabramson@gmail.com>

Reply all

To:

Jerry Roper;

2/1/2016

Inbox

You replied on 2/11/2016 10:25 AM.

Jerry,

Sure. I'd be pleased to take a look at it. Good luck!

-Bruce Abramson

Re: Seeking Help with Copyright Issue

ML

Melissa Levine <mslevine@umich.edu>

Reply all

To:
Jerry Roper;
2/8/2016
Inbox

You replied on 3/4/2016 9:24 AM.

Hi Jerry,

I'm happy to look at your materials. I've not seen too many survey instruments along the lines you describe but will do my best.

Here is information from the University of Michigan Library website.

<http://www.lib.umich.edu/users/mslevine>

[Melissa Smith Levine | U-M Library](#)

www.lib.umich.edu

Melissa also has worked in the arena of museum policy and management having served as the Exhibits and Outreach Librarian at the University of Michigan Library ...

Thanks for contacting me.

Melissa Levine

Melissa Levine

Lead Copyright Officer

[UM Copyright Office](#), University of Michigan Library

734-615-3194

Copyright for Academics

SC

Stephen Carlisle

Reply all

To:

Jerry Roper;

Cc:

James Hutchens;

Lydia Acosta;

2/11/2016

Inbox

You replied on 2/11/2016 10:05 AM.

Jerry,

I have spoken with my supervisors and they have agreed to let you have access to the following:

- 1) The video copyright training module that new faculty and certain administrative hires are required to take
- 2) The copyright policy for students and faculty

As a condition of access to these items, we would need your agreement not to further disseminate them, as they are private and proprietary to NSU.

As for my participation and assistance, do you have any estimate of how much of my time you might require?

Stephen Carlisle

Nova Southeastern University

Copyright Officer

Alvin Sherman Library, Research and

Information Technology Center

Suite 2012

Phone: 954-262-4608

Email: scarlisle@nova.edu

Appendix J

Letter of Informed Consent



Consent Form for Participation in the Study A Heuristic Approach to Creating Technological Fair Use Guidelines in Higher Education

Funding Source: None

IRB protocol #: 2016-197

Principal Investigator

Jerry Roper, M.Ed.

Nova Southeastern University Doctoral Student
3301 College Avenue
Fort Lauderdale, FL 33314-7796
(954) 262-2070, ext. 2247

Co-investigator

Gertrude (Trudy) Abramson, Ed.D.

Nova Southeastern University
3301 College Avenue
Fort Lauderdale, FL 33314-7796
(954) 262-2070, ext. 2247

For questions/concerns about your research rights, contact:

Human Research Oversight Board (Institutional Review Board or IRB)

Nova Southeastern University

(954) 262-5369/Toll Free: 866-499-0790

IRB@nsu.nova.edu

The nature of the study is virtual, so no physical address exists. The study will be conducted electronically with the U.S. Copyright Office via <http://www.copyright.gov>.

Purpose of Study

The purpose of this study is to investigate how copyright policies are being interpreted and used in colleges and universities across the country. Online courses have become even more popular as a lesson delivery method over the years, but legislation for determining what is considered to be fair use has not evolved as quickly as the technologies faculty are using today. Hopefully, the research will help to fill some of the gaps in copyright policy for the schools and clarify what can and cannot be included in online courses. The aim is to end with a set of best standard practices to minimize the risk of copyright infringement.

Initials: _____ Date: _____

Page 1 of 3

Your Involvement

You are being asked to take part in this research study because of your current involvement in higher education. It is also important to seek the input from those who have an active involvement in the day-to-day preparation, evaluation, or delivery of lesson materials. Copyright concerns have an impact on the entire school, but the faculty and staff are primarily responsible for assimilating and dispersing the knowledge. Approximately 10 to 15 participants from various colleges and universities around the country will be the target for the study.

Study Procedures

Your expected time commitment for the study is 10 to 15 minutes per round, with no more than three rounds total. You will be emailed a link to an online questionnaire to complete for each round. As an option, you may elect to answer the questions over the telephone and your responses and comments for each question will be written by the researcher accordingly. You will only need to complete this questionnaire once.

Risks

The risks of this study are minimal. These risks are similar to those you experience when disclosing work-related information to others. The topics in the survey may upset some respondents. You may decline to answer any or all questions and you may terminate your involvement at any time if you choose. If you have any questions about the research or your research rights, please contact Jerry Roper. You may also contact the IRB at the numbers indicated above with questions as to your research rights.

Benefits

The future of education strongly depends upon the successful creation, execution, and delivery of digitized materials. By agreeing to participate in this study, you will help to possibly answer many of the copyright questions that have caused so much uncertainty in details such as lesson planning and preparation. Also, answers to these questions should add reassurance faculty are not placing themselves or the schools at risk of sustaining huge fines for unintentionally violating copyright law.

Costs

There are no costs to you or payments made for participating in this study.

Confidentiality

All information obtained in this study is strictly confidential unless disclosure is required by law. Your comments will not be anonymous, so please do not include any identifying information on your surveys. Every effort will be made to preserve your confidentiality including the following:

- Assigning code names/numbers for participants that will be used on all research notes and documents.
- Keeping notes, interview transcriptions, and any other identifying participant information in a locked file cabinet in the personal possession of the researcher. Data will be retained for a minimum of 36 months after the study has concluded. When no longer necessary for research, all materials will be destroyed.

Initials: _____ Date: _____

- The IRB, regulatory agencies, researcher, and the members of the researcher's committee will review the collected data. Information from this research will be used solely for the purpose of this study and any publications that may result from this study.

Voluntary Participation

Your participation in this study is voluntary, and you have the right to leave this study at any time or refuse to participate. If you do decide to leave or you decide not to participate, it will not affect the relationship you have, if any, with the researcher. You will not experience any penalty or loss of services you have a right to receive. If you choose to withdraw, any information collected about you **before** the date you leave the study will be kept in the research records for 36 months from the conclusion of the study and may be used as a part of the research unless you request it not be used.

Other Considerations

If in the event any significant new information relating to the study becomes available, which may relate to your willingness to continue to participate, this information will be provided to you by the investigator.

Voluntary Consent by Participant:

By signing below, you indicate

- this study has been explained to you
- you have read this document or it has been read to you
- your questions about this research study have been answered
- you have been told you may ask the researchers any study related questions in the future or contact them in the event of a research-related injury
- you have been told you may ask Institutional Review Board (IRB) personnel questions about your study rights
- you are entitled to a copy of this form after you have read and signed it
- you voluntarily agree to participate in the study entitled "A Heuristic Approach to Creating Technological Fair Use Guidelines in Higher Education"

Participant's Signature: _____ Date: _____

Participant's Name: _____ Date: _____

Signature of Person Obtaining Consent: _____

Date: _____

Initials: _____ Date: _____

Appendix K

Delphi Panelist Reminder Email

Subject: Reminder to Complete Delphi Round x Survey for Fair Use Research Study

Dear _____:

Thank you for your commitment to this research effort. This is just a reminder to complete the questionnaire by mm/dd/yy to have your input included in the analysis. You can use this link to access the questionnaire: <http://>

If your situation has changed and you can no longer continue in the study, please let me know. Thanks again for your support!

Best regards,

Jerry Roper

Appendix L

Delphi Round 1 Participant Instructions

Subject: Welcome to Delphi Round 1

Dear _____:

Thank you for your willingness to serve as an expert on this Delphi panel. The objective is to use your knowledge and experiences to formulate a set of technological recommendations for fair use in online education. You are probably aware the Conference on Fair Use (CONFU) guidelines from 1998 were never widely accepted, owing to the rapid transformations in technology and lack of complete consensus of the committee members. Although this topic is inherently complicated and extensive in scope, the hopes are the end product that results with your help will still provide higher education professionals a valuable resource and minimize the confusion of fair use for digitized materials.

The first survey will explore the popular concerns and areas of confusion; this will simulate the brainstorming that occurs in a face-to-face group meeting. The questions are mostly open-ended in nature, so please elaborate as much as possible to ensure depth of the analysis, i.e. one or two sentences (or a phrase). It should not require too much of your time to finish.

I ask that you complete the survey as soon as you are able, preferably before the posted deadline, due to the time constraints of the project. I will submit a summary of the results to the group after analysis of all the responses is completed. Please note the survey will remain open in case you decide to change any of your responses after I provide the group summary. The summary will also include a link to the next round's questionnaire. Each panelist has been assigned an ID to enter for the surveys, which is also included below. Never include any personal, identifying information in the surveys.

Deadline: 11/16/16, midnight (Please complete earlier if possible)

Your Participation ID:

Link to Questionnaire: <http://tinyurl.com/Corrected-Delphi-Round-1>

I really appreciate your help with this study. Please let me know if you have any questions or concerns.

Best regards,

Jerry Roper

Appendix M

Delphi Round 1 Summary

Delphi Panel Round 1 Summary Report

Introduction

Thank you once again for completing Round 1 of the Technology Fair Use in Higher Education Delphi study! Eleven of you completed this round of questioning, providing informative and very useful responses. This survey sought opinions on several concerns for fair use of digitized materials in the education setting. It particularly focused on factors from the perspective of faculty and staff involved in online education. This report briefly summarizes the responses received and highlights the similarities and differences among the viewpoints of the panel. It also provides information respondents can draw upon in considering their responses to the questionnaire for the next round. Panelists are always free to return to the survey and make changes to any of the questions if they desire.

Summary of Responses

Question 2: What is it about fair use that causes the most confusion for all distance and online educators, both full-time and adjunct?

Four of the 11 respondents commented that confusion lies in the lack of comprehension of the four parts of fair use, PANE. They described how most have no understanding of how to properly assess their work against the acronym and apply it. The inherent indistinctness of fair use, lack of clear guidelines, making misguided assumptions, and ignorance of copyright law were the opinions for the majority.

For example: *“No one, not even a trained lawyer, can appropriately gauge a fair use case or scenario without first understanding the fundamentals of U.S. copyright law. This is a recurring mistake: people go right to fair use analysis without learning the basics about works, ownership, and rights. Therefore, the inability of people to understand the rest of copyright law causes the most confusion for educators when trying to understand fair use.”*

“Educators confuse Fair Use with the Teach Act and Section 110 (face to face and virtual) of the Copyright Act. Furthermore, some educators (falsely) believe that the LMS or online version of their class is an extension of their physical classroom. And finally, instructors don't know enough about Fair Use to do a fair use analysis.”

“The ambiguity and flexibility which, ironically, is one of its strengths.”

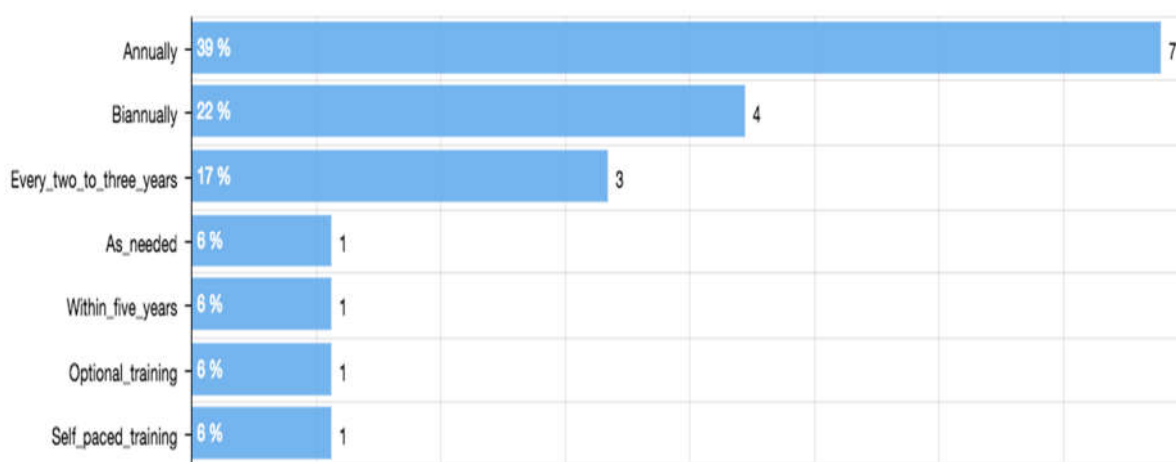
“Most just assume it's an open license to do what they want.”

“I think the idea between authorship and ownership are often blurred. What I see most often is that instructors/course designers will find something either on the open web

(Google search) or through the library's subscription databases and not understand whether s/he may use it or not in a course most often with the result of if I can find it online that means I can use it without considering who posted it and for what purpose.”

Question 3: How often should online educators be required to receive copyright training?

Most expressed more than one opinion, with 39% of the suggestions from seven of the 11 members favoring annual training in the form of workshops and refresher courses. Semiannual/biannual continuing education comprised 22% of total recommendations. The remaining suggestions (optional, as needed, self-paced, every two to three years, and within five years) are reflected in the graph below:



Question 4: How long should online educators be able to use their multimedia projects that were created with copyrighted materials for teaching?

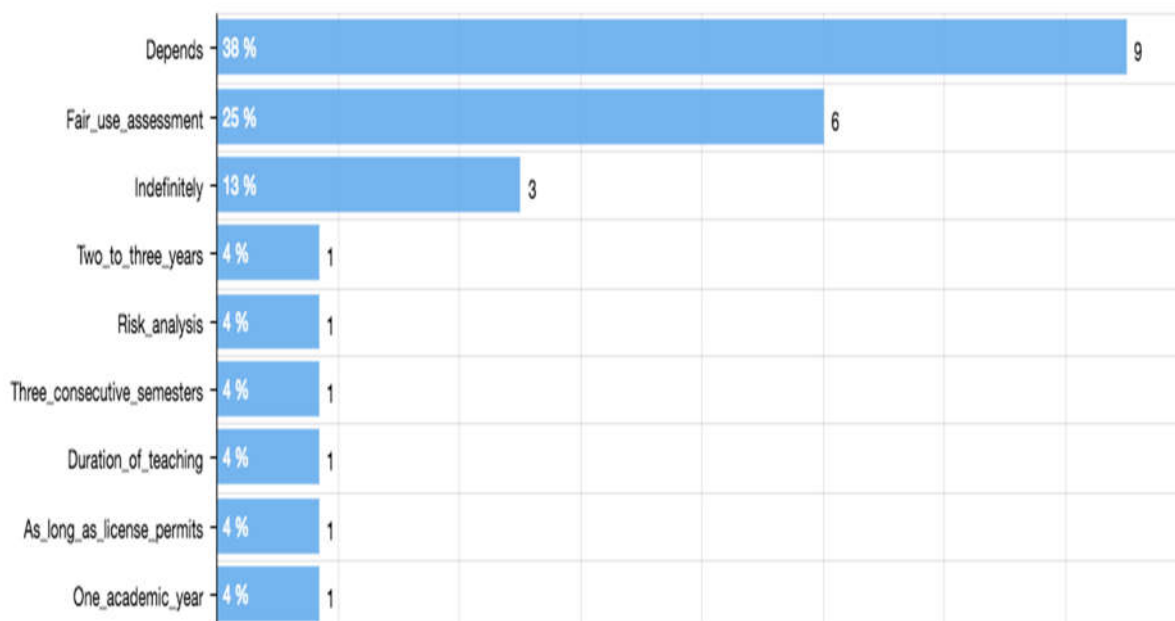
Thirty-eight percent of the group recommendations, reported from nine of the 11 panelists, were conditional. Suggested factors to consider beforehand were fair use and risk analysis, preliminary permission granting, and licensing.

For example: *“If using FU, analysis should be done on a term by term basis. If licensed, then for as long as the license permits.”*

“Length of usage should be based on a Fair Use assessment and risk analysis. Low risk materials that fall within Fair Use should be used indefinitely if no complaints are received.”

“Assuming they got appropriate permissions - forever. If they didn't, I would say they need to stop immediately. If they're arguing Fair Use then I assume this could change.”

Other recommendations are displayed on the following graph:



Question 5: Should your response from Question #4 also apply to both synchronous and asynchronous distance education? Why or why not?

Sixty percent of the recommendations, as illustrated below, stated there should be no distinction in time limits for using the materials in online vs. both forms of distance education. Two panelists who agreed with this question listed variables pertaining to fair use.

For example: *“My response in #4 was written to reflect synchronous distance education. I assume that an asynchronous distance course would use the same/similar information in perpetuity ... which may fundamentally change the 'Nature of the Use' if the content is always accessible. (It really depends on ALL 4 of the factors.)”*

“fair use if analyzed properly qualifies regardless of synchronous or not”



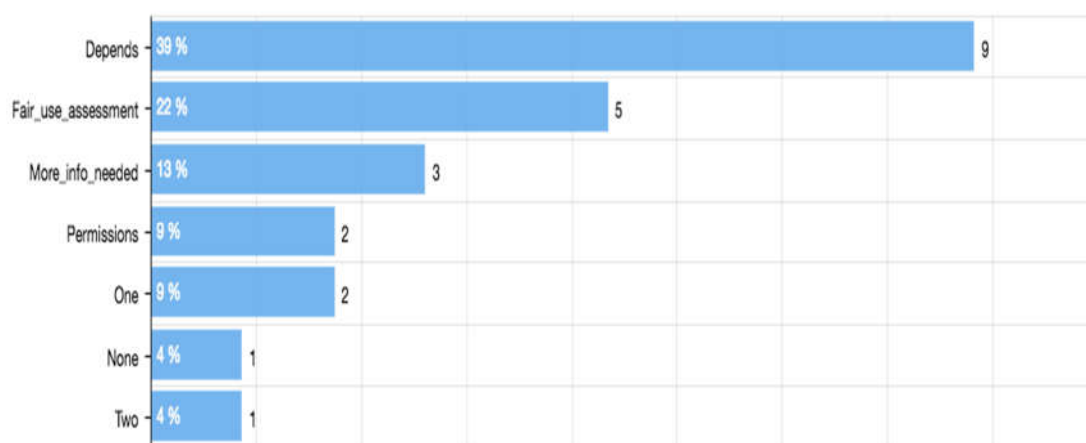
The majority did not suggest a number, rather they stated there are factors to consider. Accordingly, five panelists stated fair use analysis was necessary while three wrote that more information was needed. Those who supplied a number defined purpose.

For example: “2 -- original plus 1 for archival purposes”

“One backup copy for preservation. Without more information, it would be difficult to determine.”

“no bright line number-- consider fair use”

“I would need more information. Is the material to be used for a course assignment? It depends on whether or not permission of copyright owners was obtained.”



Question 7: Should there be any exceptions to your response to Question #6? If so, what should be the exception(s)?

Seven of the nine respondents stated no exceptions should exist, and the other two declared more information was needed. Those in disagreement to exceptions included their rationale and concerns.

For example: *“I would need more information - it's situation specific.”*

“I don't think there should be exceptions. I believe that the agreement should be reevaluated periodically or redone if the instructor wants to use something outside of the initially agreed upon intent.”

“Linking, streaming or displaying is always safer. I would discourage faculty from doing otherwise unless there was a strong pedagogical reason for doing so.”

“There may be several exceptions (e.g. public domain status, exhaustion, fair use) given a certain set of facts. Also, with electronic materials, contracts may override what copyright exceptions are available. It's difficult to say in isolation”

Question 8: What should an online education faculty policy cover for work-related downloading of multimedia content from the Internet?

Responses were diverse but fair use assessment in general appeared the most, with six of the 11 respondents making a reference to it or PANE in some context. Permissions and documentation compliance was a common theme as well.

For example: *“Assume works are 'in copyright' unless otherwise noted. Institutional policy regarding Section 110(2) and Fair Use. Exactly what is expected of faculty. How to do it. What documentation to retain. Information on whether institutional legal council will back them up if they followed the policy and can prove it. Information on where to get more help. Examples of what to do and what not to do.”*

“Always attribute, even if the material is freely usable. Also, for work that is copyrightable, have reminders about fair use, and the 4 factors.”

“Responsibilities and risks to the University for any illegal downloading.”

“I think the policy should outline Fair Use and the factors associated with Fair Use. I think the policy should cover making copies and the factors surrounding physical copies of resources. I think the policy should cover a little about Public Domain and Creative Commons licenses, and stress the idea of authorship and ownership and that things found on the web are not necessarily there with the author or copyright holder’s permission.”

“clarification that materials may be downloaded for personal/research use, other uses require fair use consideration or permission from the copyright owner(s)”

“The policy should assure that they have been instructed how to document their fair use argument, any compliance with TEACH Act issues, as well as discipline-dependent best practices, and the impact of the laws on the faculty member's liability)”

Question 9: What is the most important point an online education faculty policy should emphasize, in regard to distributing a multimedia project created with copyrighted works over the Internet?

Nearly half of the responses emphasized permissions and fair use assessments. Concern for the TEACH Act and overall user responsibility were also expressed.

For example: *“Perhaps to get it cleared by the university, first.”*

“Creation and distribution are different questions, each of which must be analyzed -- separately -- under the four factors. Technological protection mechanisms will be particularly important with respect to the latter.”

“The importance of obtaining copyright permission - if you have permission from the copyright owner, you have no more worries. Otherwise, you have to focus on fair use or the TEACH Act.”

“If you didn't make it, don't have permission to share it, or it doesn't have a Creative Commons license, you need to do a Fair Use analysis to determine if sharing the work online is fair.”

“That the faculty member (if the institution complies with the TEACH Act and is indemnified) is financially liable for their actions (this is to get their attention).”

“materials are used by fair use or permission was sought and, if applicable, \$xx fees were paid; materials are created for the personal & instructional use of students enrolled in the class and may not be shared or redistributed”

Question 10: What should an online education faculty policy state in regard to altering copyrighted works that were added into a multimedia project?

The common theme for the responses to this question was attribution and acknowledgement as well as documentation. Fair use in general was mentioned throughout many of the suggestions.

For example: *“if materials are 'adapted' that fact should be stated along with a full citation to the original”*

“I think the policy should stress the intent of the work and making sure that the changes follow the fair use guidelines.”

“Focus on transformativeness.”

“I don't see a need for a separate policy, which might implicate the institution, when basic education about the rights of a copyright holder, fair use, the TEACH Act, and how to document their arguments for their use. We need to teach faculty that academic use does not automatically mean Fair Use applies.”

“Good scholarship requires citation. The law requires either permission or Creative Commons license + attribution or assertion of an exemption (Section 110, Teach Act or fair use). (Libel or slander laws should also be referenced, but these are outside of the scope of my knowledge.)”

Question 11: What are your thoughts or concerns (positive or negative) regarding the recent changes to the DMCA?

The responses in general expressed negative sentiments for the changes. Panelists with opinions provided concerns from the perspectives of all stakeholders involved.

For example: *“It needs to be revamped; it's cumbersome for both rights holders and those looking to fairly use protected content”*

“The three year review creates a number of issues; some items should be able to be 'renewed' automatically, without re-application every three years. This would make the process a lot easier for faculty to follow.”

“changes relating to 'notice and staydown' and to the 'safe harbor' portion of the law will be hard to enforce and have a detrimental impact on the use of copyrighted materials”

“I think the recent changes to the DMCA potentially limit creativity and somewhat challenges”

“The DMCA unfairly limits fair use.”

Question 12: What should fair use portion limitations be (in time, percentage, words, etc.) for online educators who would like to incorporate the following copyrighted media into their courses?

Responses are summarized in the chart below. Panelists in some cases added concerns regarding the nature of the media.

For example: *“It is hard to display less than 100% of an illustration or photograph. Thumbnails should be allowed with links to higher-resolution or larger originals.”*

“As much as is necessary for the pedagogical purpose, taking into account the four factors”

“I don't know. (Do you mean code or running a copyrighted application itself?)”

Computer Software	5%	10%	0	100%	0	Unsure	As much as necessary based on PANE
Illustrations and photographs	5%	10%	100%	100%	Depends	100%	As much as necessary based on PANE
Motion media	5%	10%	10%	100%	10%	10%	As much as necessary based on PANE
Musical works, lyrics, and	5%	10%	100%	100%	10%	Up to 1 min. or 10%	As much as necessary

music videos							based on PANE
Numerical data sets	5%	10%	100%	100%	Depends	100%	As much as necessary based on PANE
Text material	5%	10%	10%	100%	10%	Up to 2 paras. or 10%	As much as necessary based on PANE

Question 13: Based on your responses to Question #12, if an online educator is unable to locate the original owner to ask permission, should these portion limitations change? If so, how?

Six of the responses indicated that portion limitations should not change in this situation, while three stated yes. Reasons listed for choices varied, but most were consistent with observing fair use as written in the law.

For example: “No, I don't think they should change - these works are 'orphan works,' still protected by copyright. An unfortunate situation, but being an orphan doesn't have any effect on fair use.”

“No, I feel that at the point the work passes to public domain the amounts can change but even if the author cannot be found the copyright should be respected.”

“Difficult to answer either 12 or 13 because copyright's fair use provisions specifically have rejected a standardized temporal or percentile amount that automatically signals a fair, non-infringing use. Yet these questions ask us to provide such percentages”

“Yes. Making a good faith effort to contact the rightsholder reduces your risk of a suit. I would encourage them to document their efforts and increase their usage to a reasonable portion for their teaching purpose.”

“Yes - online educators should be able to act in good faith -- and probably the numbers should go up.”

Question 14: What will be the biggest obstacle for online educators in the future for fair use?

Nearly all respondents referred to the issue of education and knowledge deficits for fair use and copyright law overall. Growing expenses and enforced restrictions were also described.

For example: “Understanding the intricacies.”

“Knowing how much material out of the total work is considered a fair use.”

“Because of the increasing restrictions placed on educators by publishers and other copyright holders, there is an increase in the fees associated with use and there will be a more proactive approach to prevent violations on copyright.”

“Fair Use is too expensive and difficult for full time faculty. Given the scope of material available (YouTube grows by ~50 hrs per minute) it's impossible to administer the balancing test.”

“the burden and high cost (in time and dollars) of hunting down copyright owners and trying to obtain permission for reuse IF fair use exemption does not apply”

Question 15: If you have anything further to add, please comment.

One panelist provided the following comments: *“Databases can be copyrighted. Numerical data sets cannot. My responses assume that most courses are not 'open to the world' (i.e. they are not MOOCs.) Assigning percentage amounts to proposed uses is too arbitrary of a solution to determining what is fair, in my opinion.”*

Appendix N

Delphi Round 2 Participant Instructions

Dear _____:

Thank you for generously providing your time and input to this Delphi panel. The responses provided from the previous round were very helpful to this project. I have attached a copy of a quick summary and general analysis of the results for Round 1. An extensive form will be provided after completion of the third/final round.

The questionnaire for this round was constructed using responses from the panel. The goal is to use your same participant ID and rate each of the responses using a Likert scale that spans from strongly agree to strongly disagree. As a reminder, do not include any personal, identifying information. Please note this questionnaire will also remain open in case you decide to change any of your responses after receiving the upcoming group summary for this round.

Deadline: 12/05/16, midnight (Please complete earlier if possible)

Your Participation ID:

Link to Questionnaire: <http://tinyurl.com/Delphi-Round-Two>

I greatly appreciate your continued help with this study. Let me know if you have any questions or concerns.

Best regards,

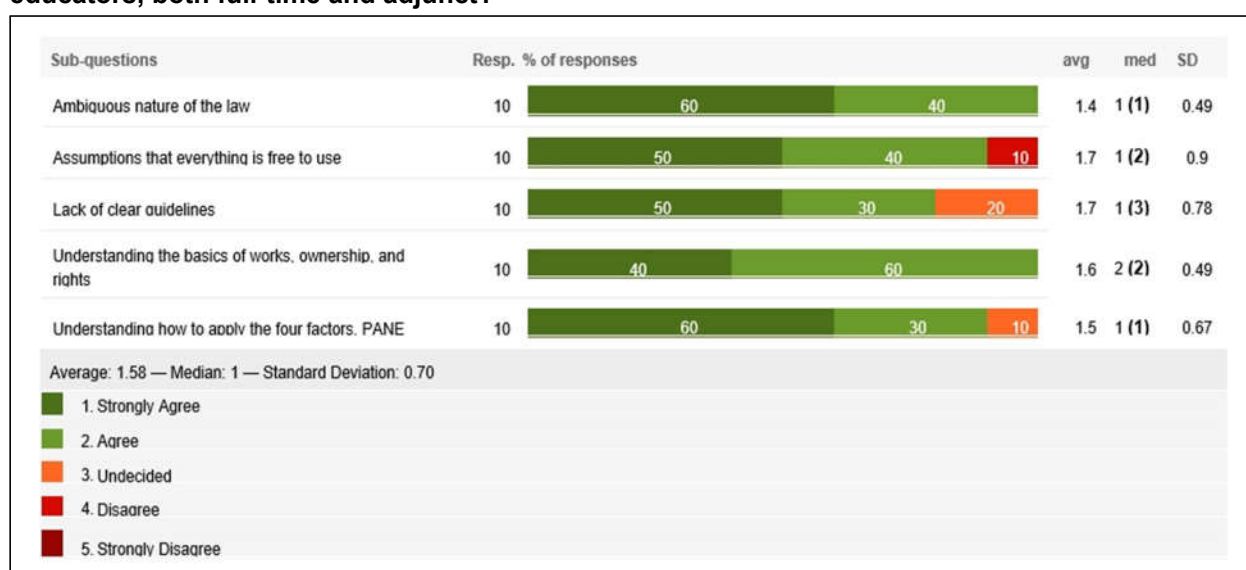
Jerry Roper

Appendix O

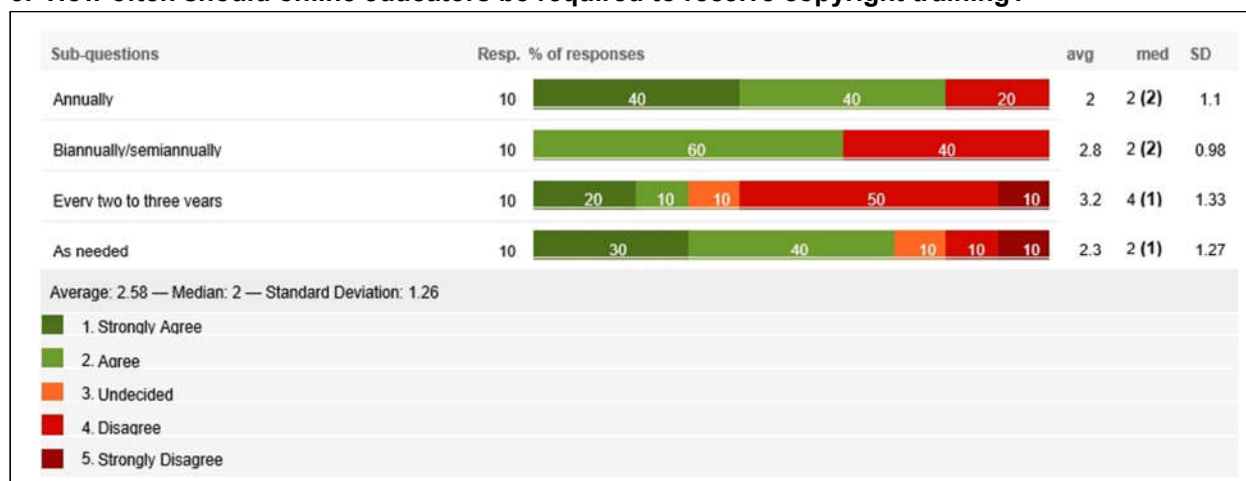
Delphi Round 2 Summary

Ten out of the 11 panelists from the previous round contributed. Please note how the score is associated with the color-coded legend for each of the items you responded to in the last round. The group median scores—agreement for the majority—are listed under the “med” column. I added your score/how you rated the items alongside the median in parentheses to compare with the group’s score. You will be asked in the final round to either re-enter your initial score if you decide to keep it, or revise it up or down.

2. What is it about fair use that causes the most confusion for all distance and online educators, both full-time and adjunct?

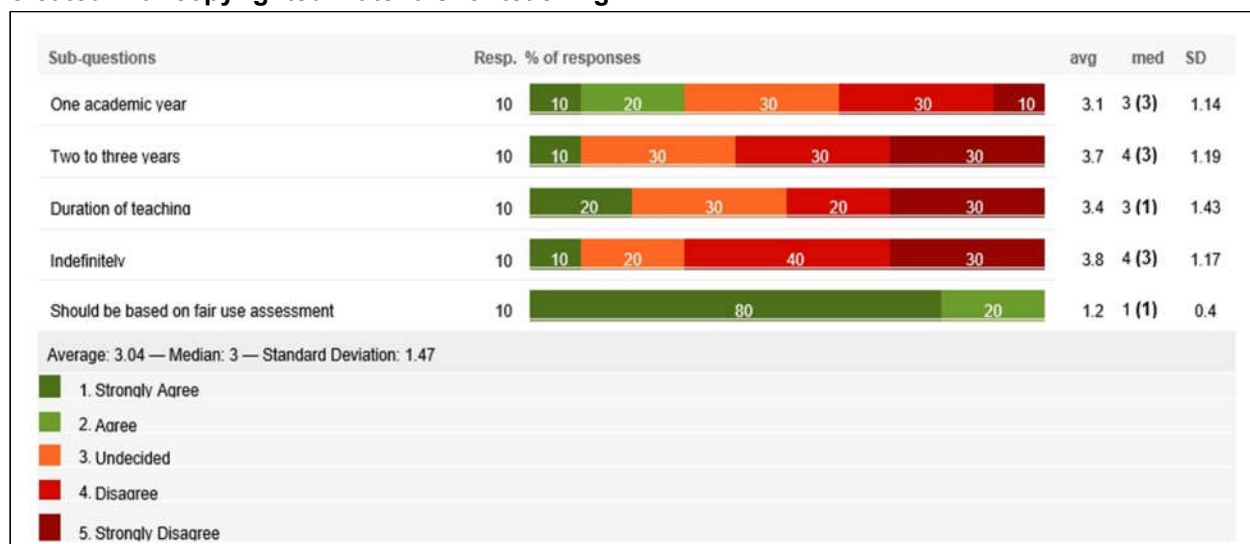


3. How often should online educators be required to receive copyright training?

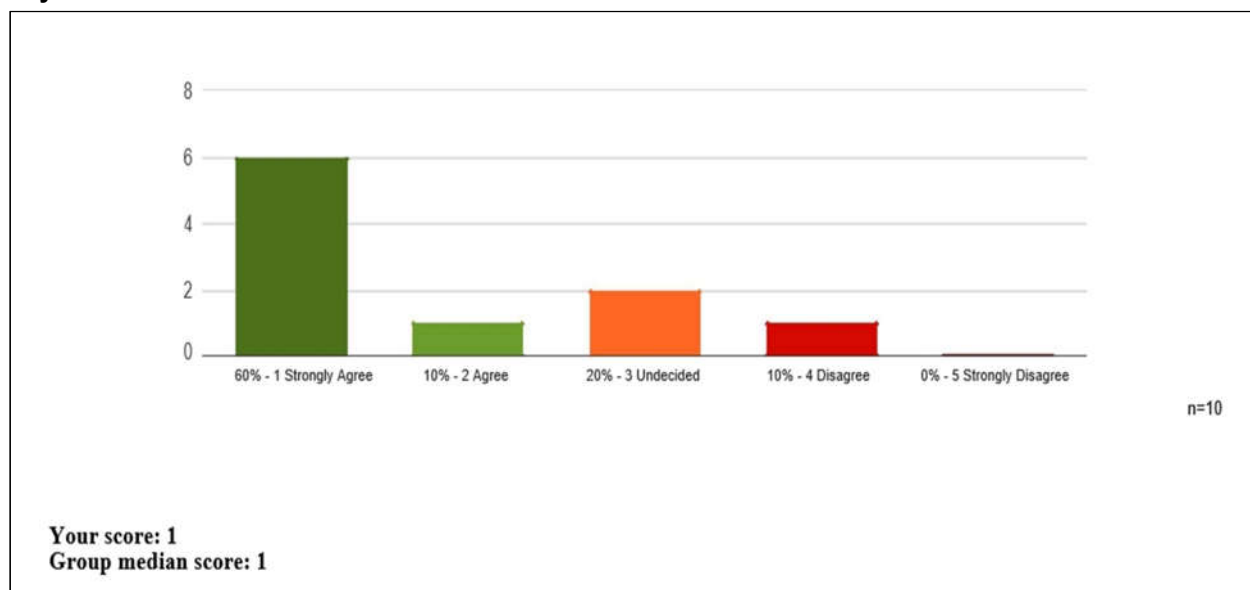


Time Limitations

4. How long should online educators be able to use their multimedia projects that were created with copyrighted materials for teaching?

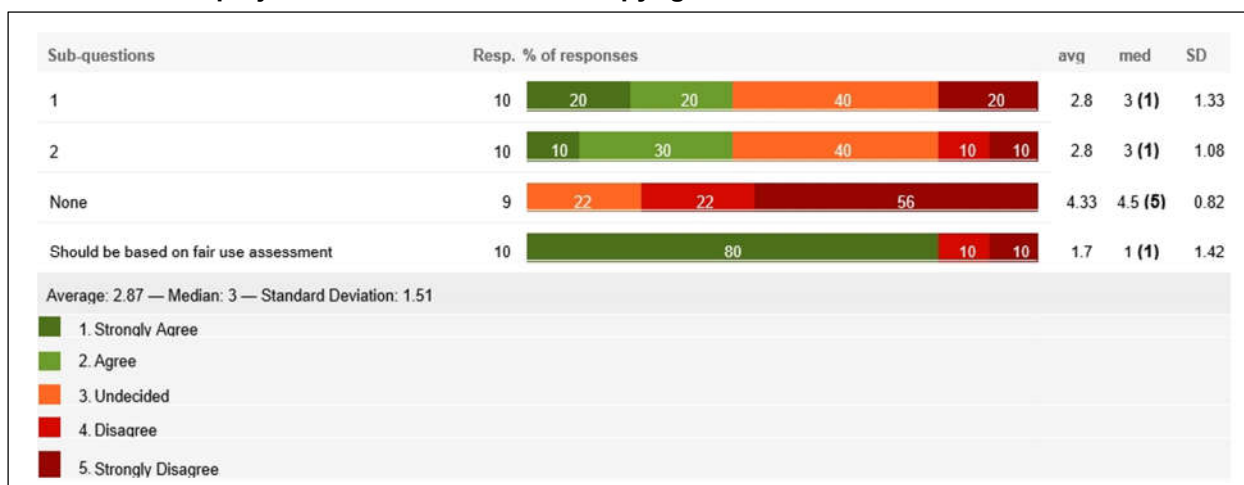


5. The same time limits from Question #4 should also apply to synchronous and asynchronous distance education.

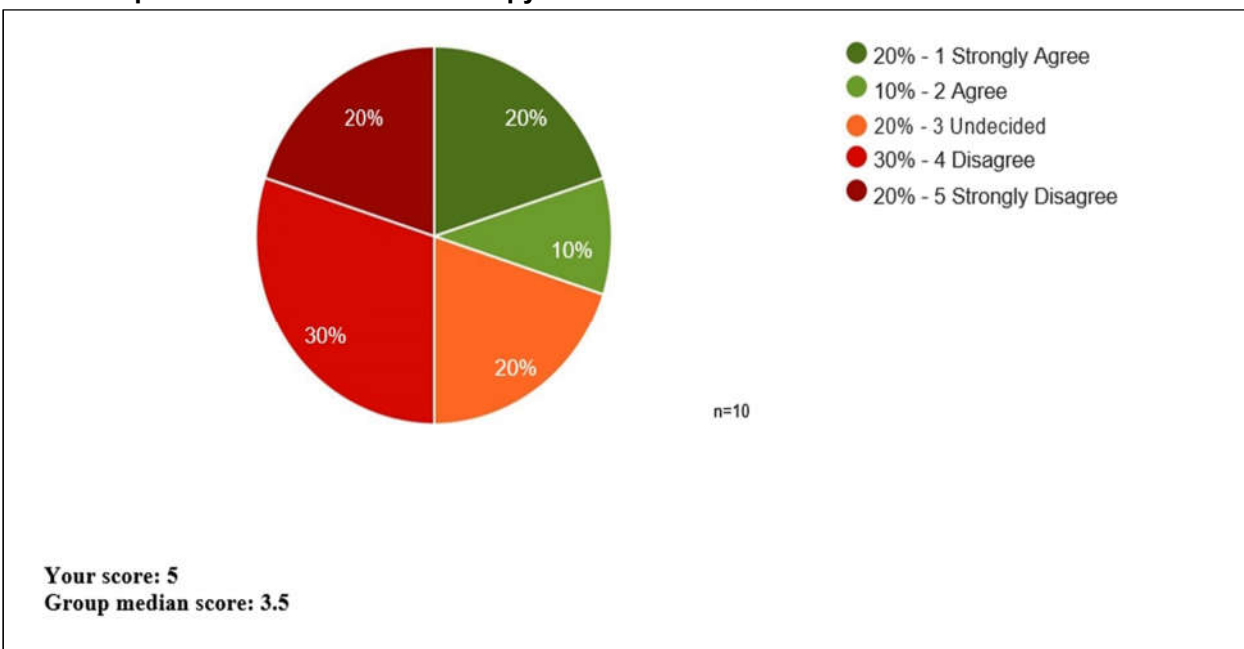


Copying and Distribution Limitations

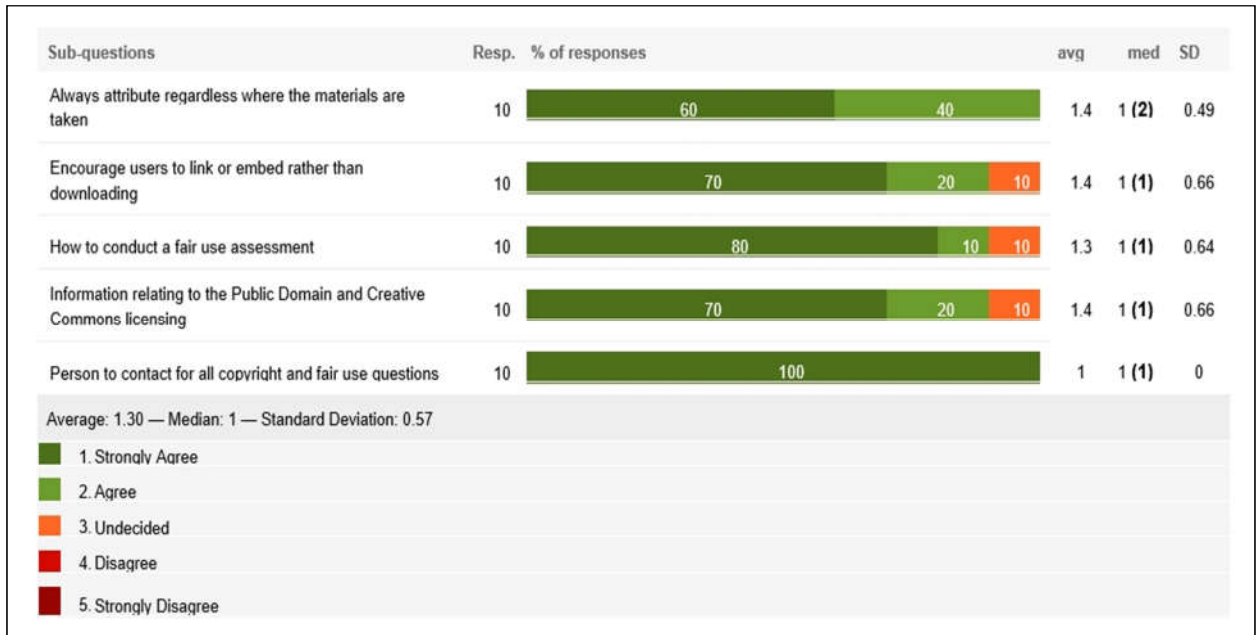
6. How many copies, including the original, should an online educator be allowed to make for a multimedia project that was created with copyrighted materials?



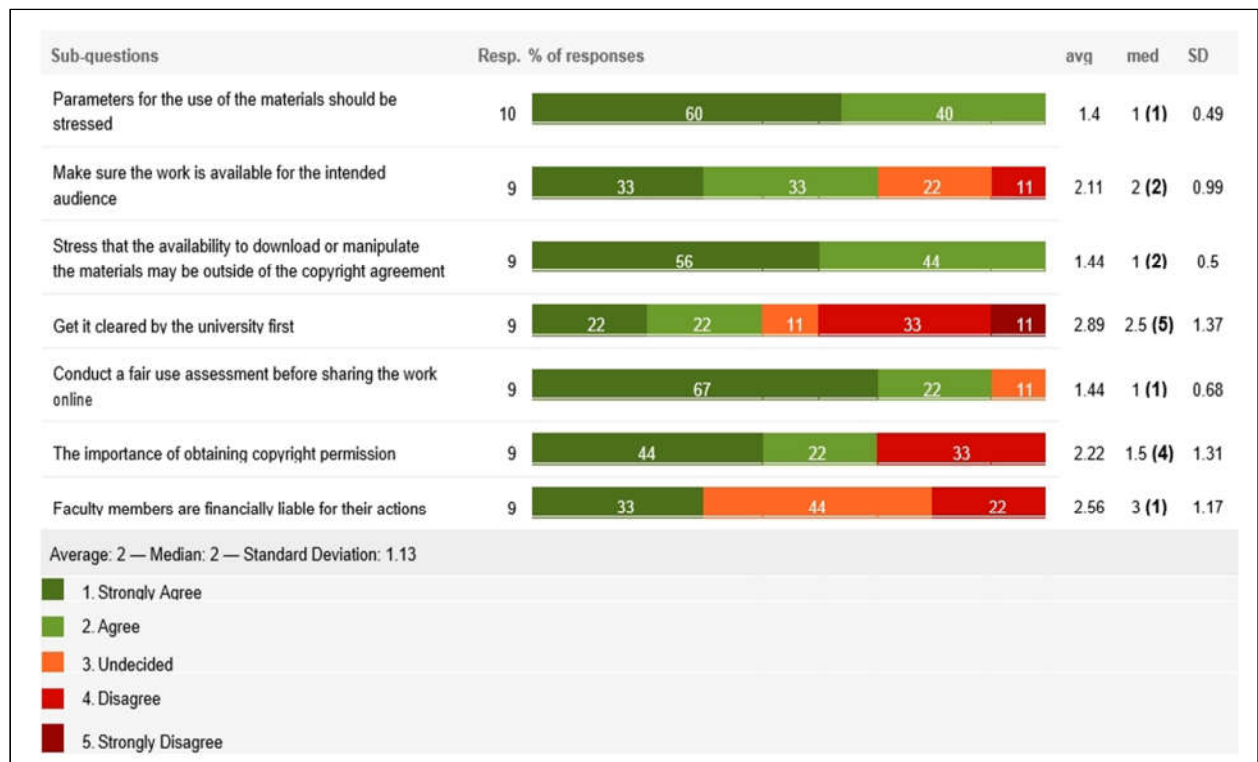
7. No exceptions should exist for the copy limitation from Question #6.



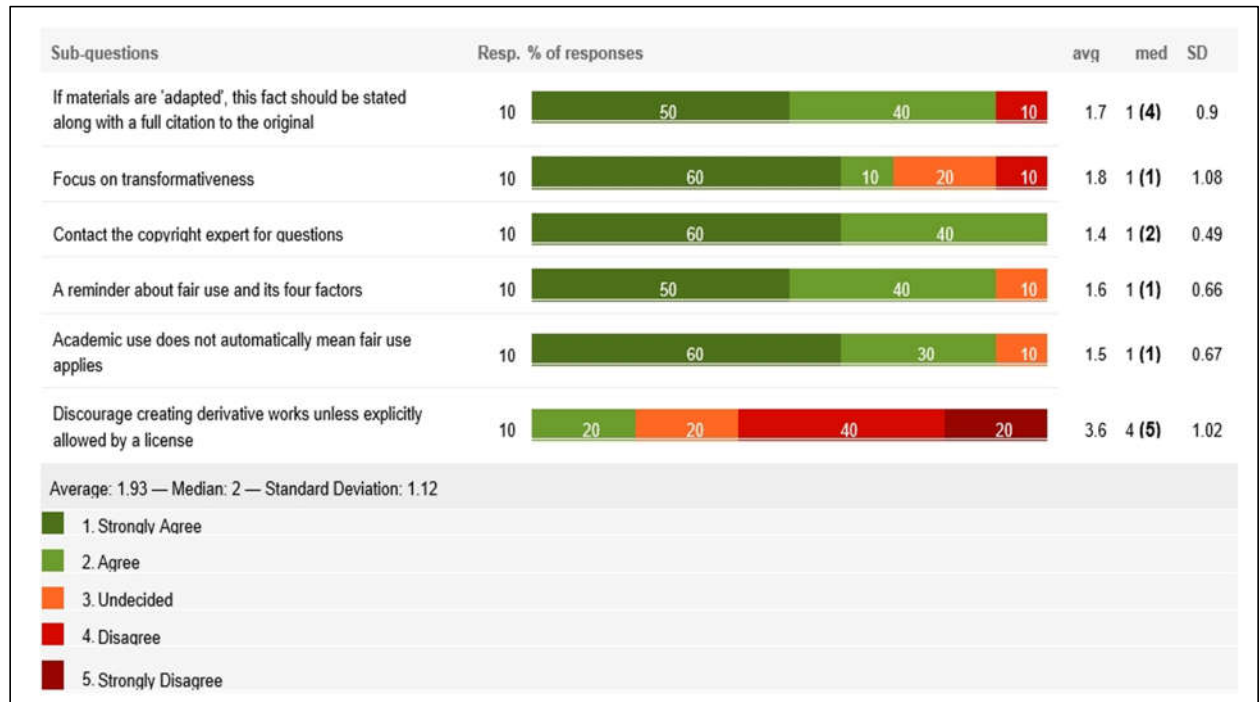
8. What should an online education faculty policy cover for work-related downloading of multimedia content from the Internet?



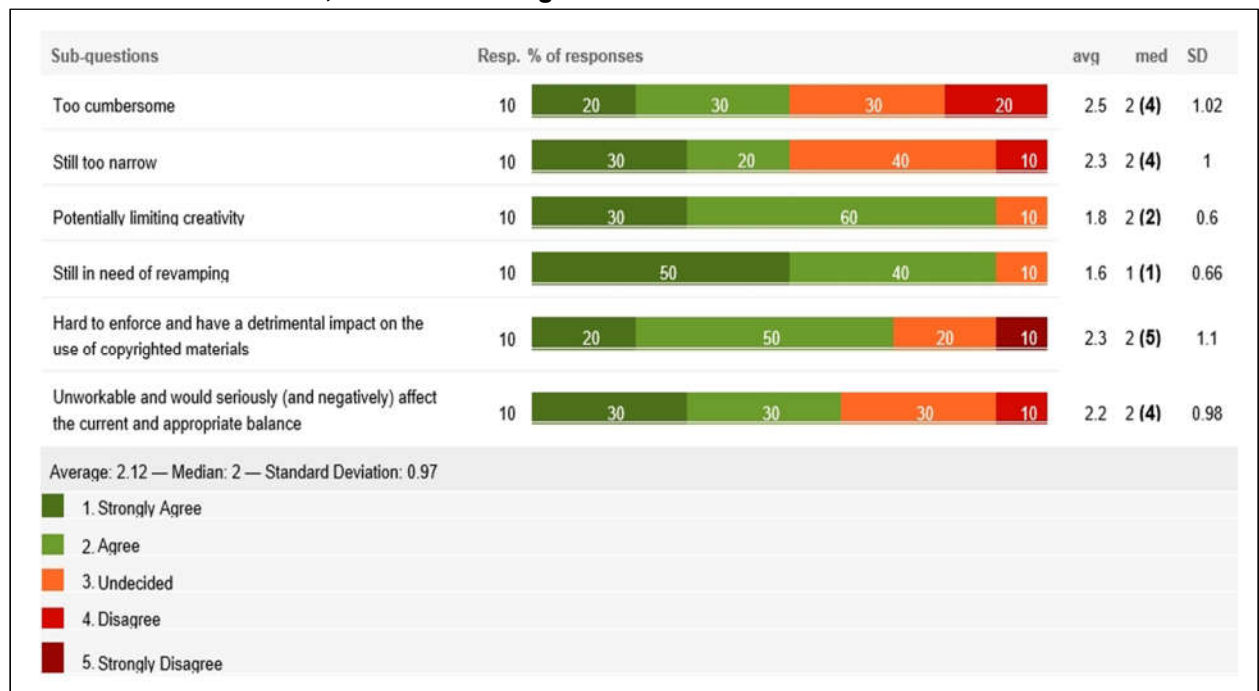
9. What is the most important point an online education faculty policy should emphasize, in regard to distributing a multimedia project created with copyrighted works over the Internet?



10. What should an online education faculty policy state in regard to altering copyrighted works that were added into a multimedia project?



11. For online educators, the recent changes to the DMCA are:

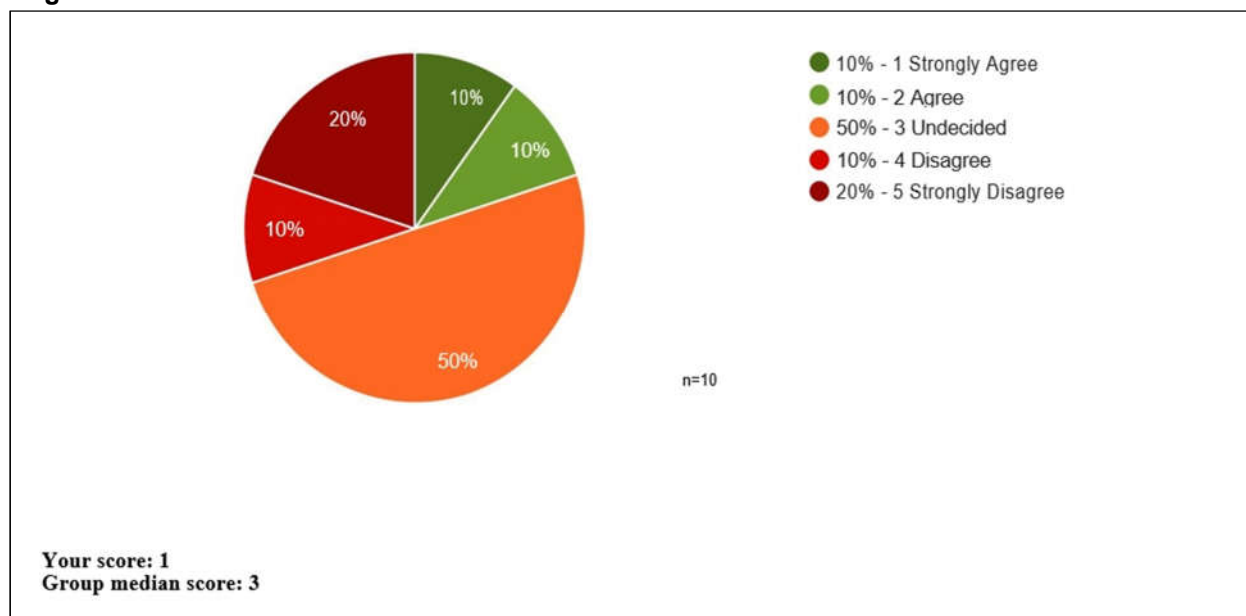


Portion Limitations

12. Portion limitations for online educators who would like to incorporate copyrighted media into their courses should be:

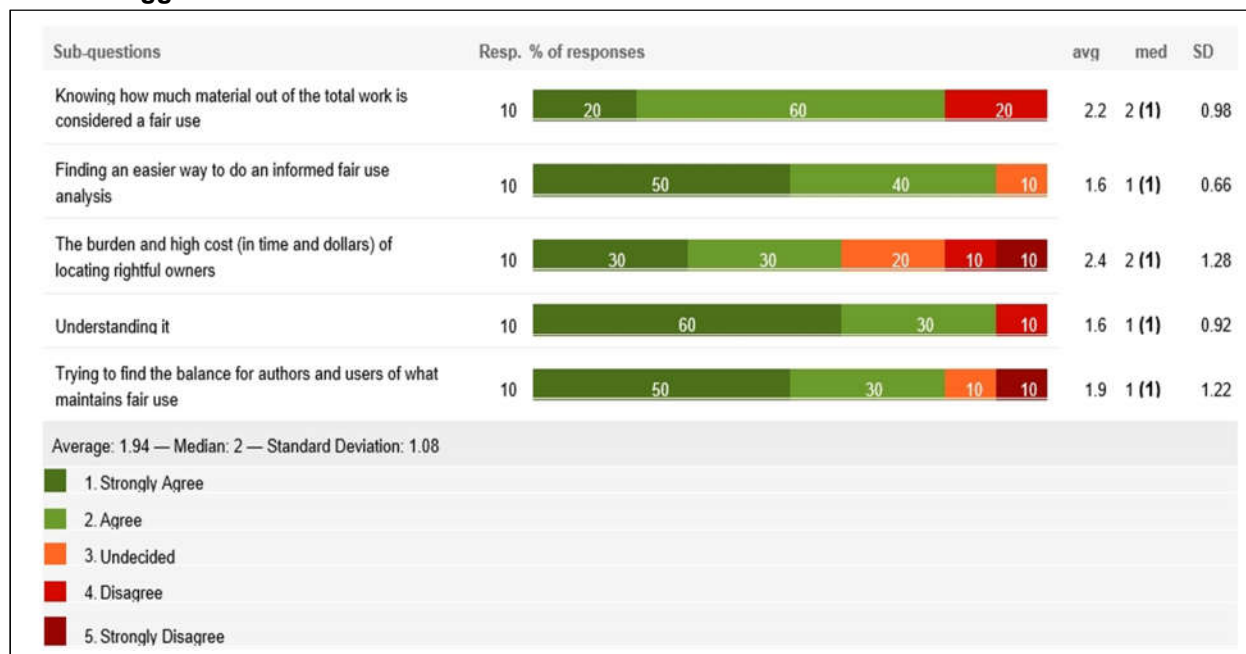


13. An online educator should be allowed to use up to 100% of an orphan work since the original owner cannot be located.



Future Outlook

14. The biggest obstacle for online educators in the future for fair use is:



Appendix P

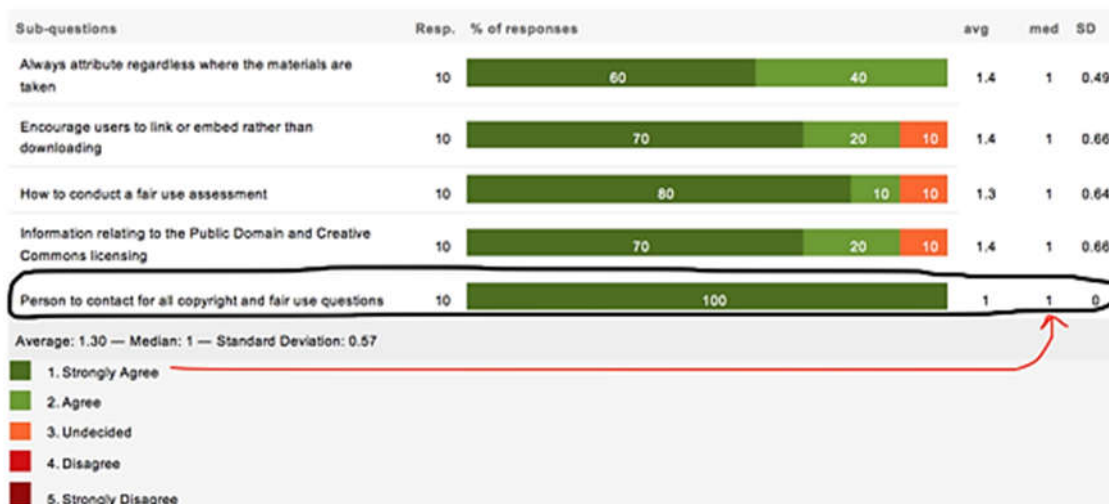
Delphi Round 3 Participant Instructions

Dear _____:

I cannot express enough gratitude for your help with this project, and am very happy to announce we have officially reached the final round of the process. The responses provided from the previous round were analyzed and the results are attached. The plan is to provide each panelist a comprehensive summary of the findings after the necessary data validation and verification, which may take approximately a week.

The questionnaire for this round is essentially the same questions from the previous round, with only one omitted item from Question #8. Because all members responded the same (Strongly Agree), there was no need to bring this item back.

8. What should an online education faculty policy cover for work-related downloading of multimedia content from the Internet?



Group median scores, or agreement for the majority, are listed under the “med” column for each question in the attached summary. I added your score/how you rated the items alongside the median in parentheses to compare with the group’s score. For this final round, either re-enter your initial response if you decide to keep it, or revise it up or down. The rationale is to determine if consensus will exist for any of the question items after each member has a chance to review the previous round's summary. As a reminder, do not include any personal, identifying information. Please note this questionnaire will also remain open for at least an additional week after the deadline in case you unable to meet the date below due to other obligations.

Deadline: 12/14/16, midnight (Please complete earlier if possible)

Your Participation ID:

Link to Questionnaire: <http://tinyurl.com/Delphi-Round-Three>

I greatly appreciate all your input to this study. Let me know if you have any questions or concerns.

Best regards,

Jerry Roper

Appendix Q

Final Delphi Summary

Delphi Participant Report

for Research Study

A Heuristic Approach to Creating Technological Fair Use

Guidelines in Higher Education

by

Jerry Roper

Graduate School of Engineering and Computing

Nova Southeastern University

2017

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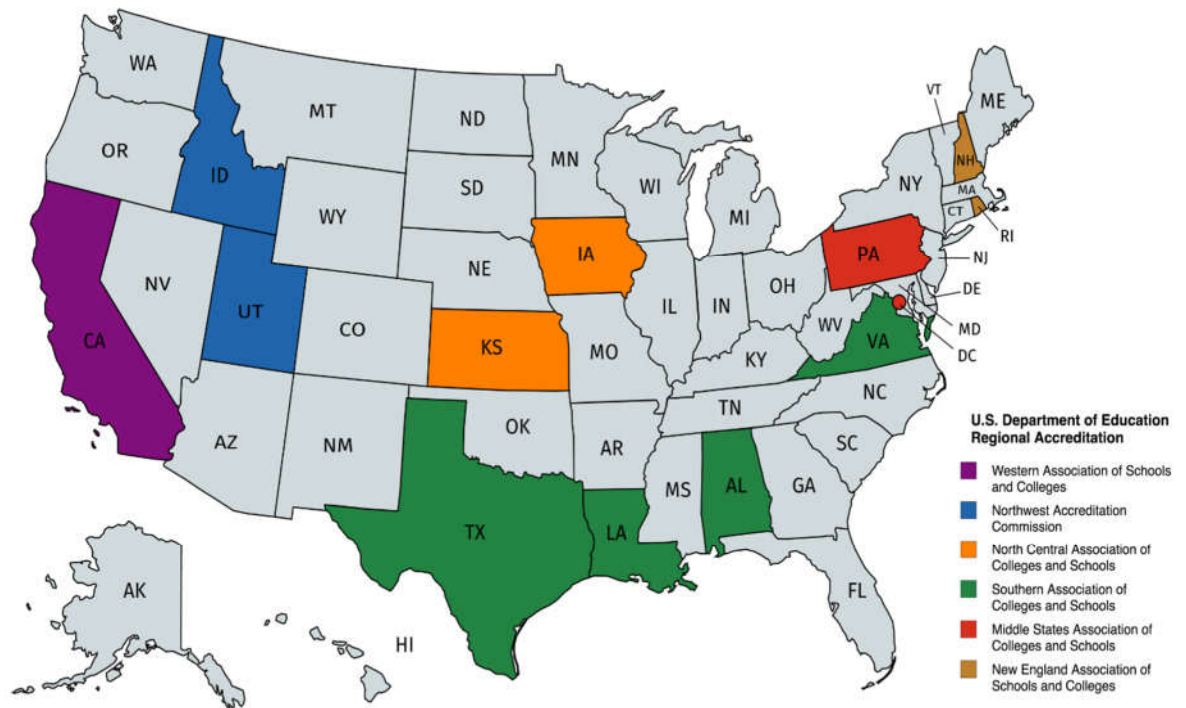
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Technological Fair Use Delphi Study Participant Report

Background

Thank you for generously providing your time for this research effort. The purpose of the three round Delphi study was to explore the opinions of a geographically diverse panel of professionals proficient with copyright and fair use laws in online higher education. Findings may be beneficial for lessening the confusion and uncertainty of copyright and fair use as currently applied to higher education professionals. Participants' states represented each of the six regions for the U.S. Department of Education, as noted by *Figure 1*.



Created with mapchart.net ©

Figure 1. U.S. Department of Education Regional Accreditation map representing Delphi participants' location.

Consensus was sought for various items the literature has described as either vague or confusing. The topics presented were fair use in general, time limitations, copying and distribution limitations, portion limitations, and outlook for fair use in online education. A total of 15 participants working fulltime in different colleges and universities initially agreed to participate and completed the background questionnaire. *Figure 2* represents their educational background.

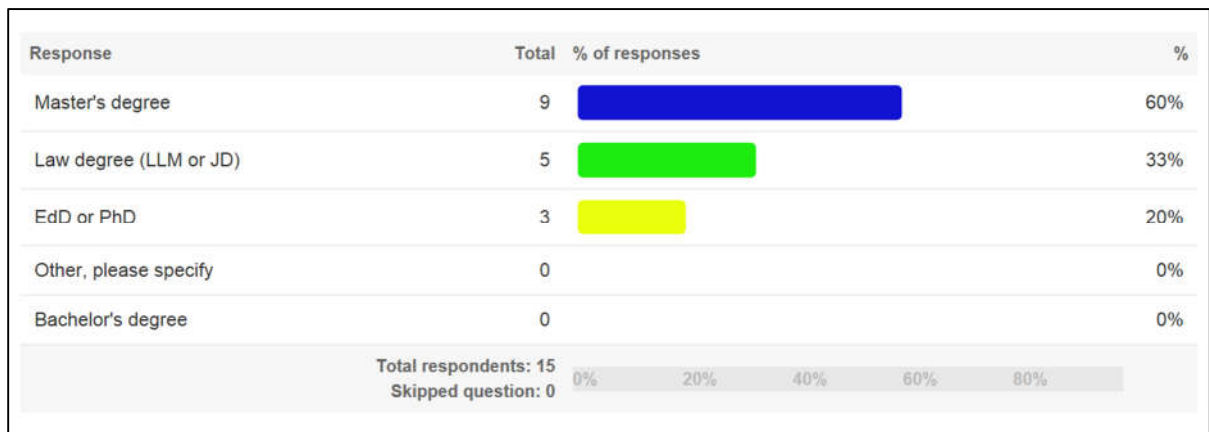


Figure 2. Delphi Educational Background

The average number of years of professional experience was recorded as 19.73. Respondents stated differing frequencies for personal copyright training, as depicted in *Figure 3*, and the majority indicated their school currently has a policy in place, as represented by *Figure 4*.

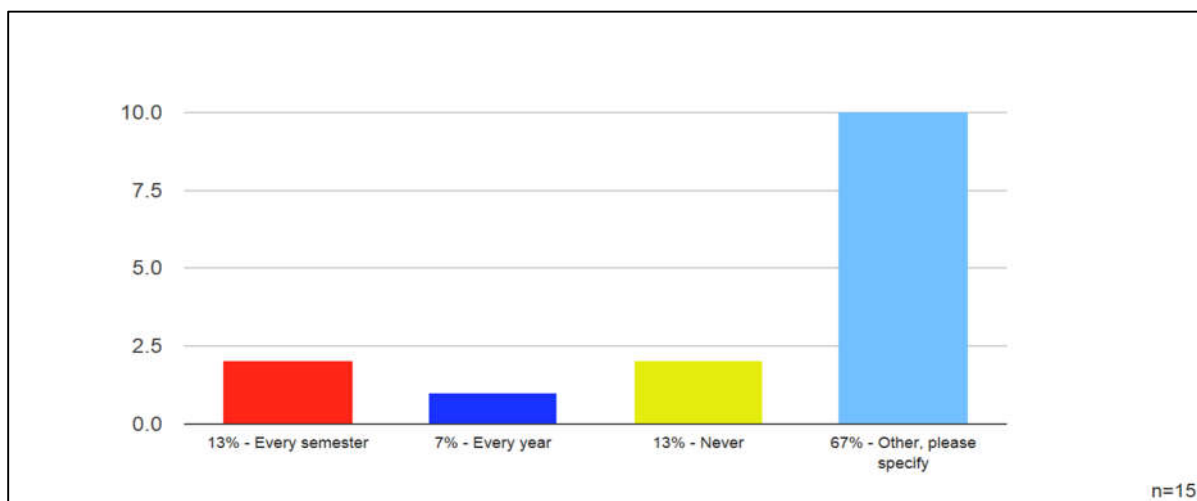


Figure 3. Frequency of copyright training received.

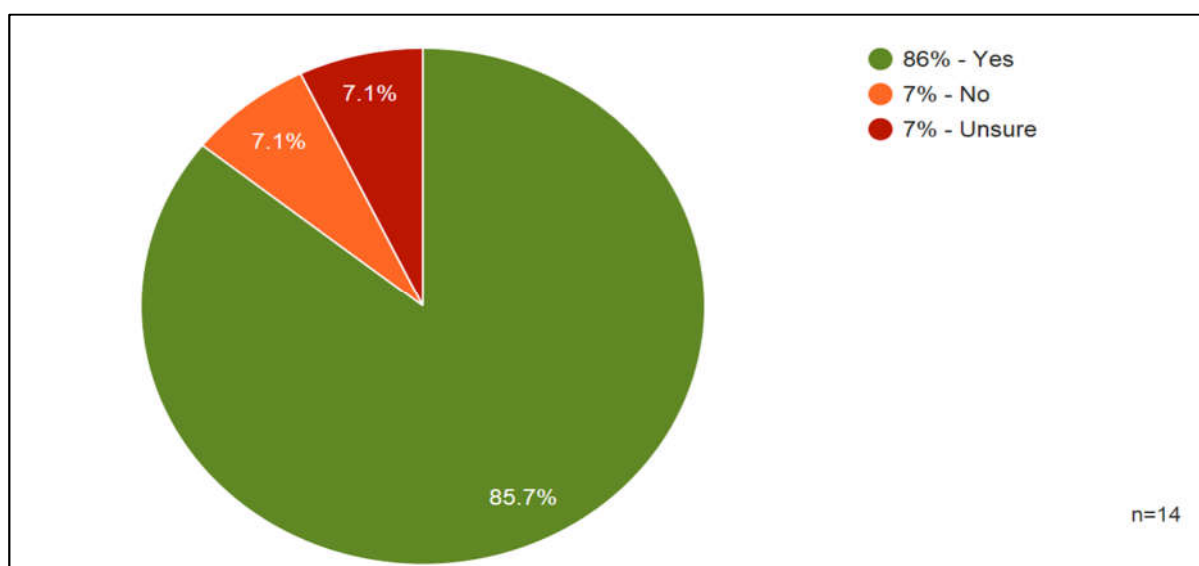


Figure 4. Knowledge of existing copyright policy at participants' institutions.

Regarding the 67% who selected “other” for frequency of training, the majority explained that the training is done as needed. One respondent did not indicate whether his/her institution had a copyright policy in place. As Figure 5 expresses, 12 of the 15

respondents are actively involved in conducting copyright training either inside or outside their respective organizations.

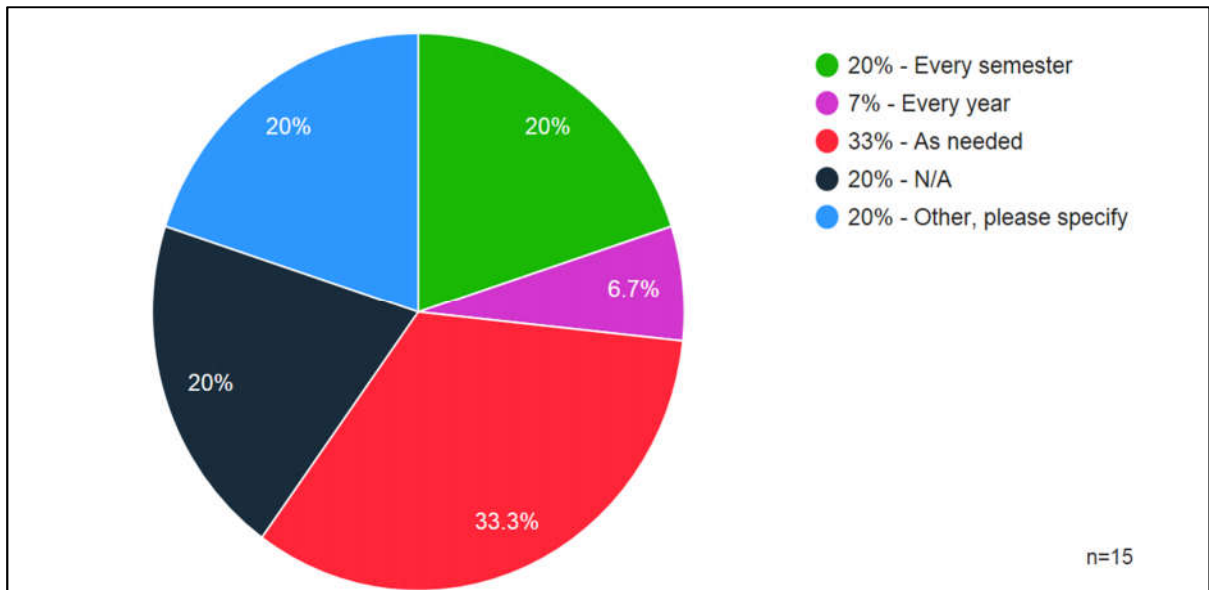


Figure 5. Frequency for conducting copyright training.

Determining Consensus

Green (2014), Hsu and Sanford (2007), and Skulmoski, Hartman, and Krahn (2007) assert consensus among the panel of experts may be reached early or after several rounds. The authors suggest calculating the mode, median, and mean (measures of central tendency) to achieve the most accurate viewpoints from the group. Green (2015) and Kalaian and Kasim (2012), nevertheless, disapprove of calculating the mean for ordinal data types as collected from the Likert surveys used in this study. The mean can give a false consensus because outliers will be included, and can be extreme in some cases. Therefore, emphasis will be placed on modes, medians, standard deviations, percentage of responses, and interquartile ranges for determining group consensus (Habibi, Sarafrazi, & Izadyar, 2014; Henning & Jordan, 2016; Hsu & Sanford, 2007).

Interquartile Range

The interquartile range, or IQR, is frequently used in Delphi analysis consisting of the middle 50% of participants' responses (Henning & Jordan, 2016). It is considered objective and rigorous enough for measuring the dispersion of the median to help identify consensus; the common practice is a value less than one is suitable enough for indicating consensus. An example of IQR is represented in *Figure 6*, the response from a Likert scale question ranging from Strongly Agree to Strongly Disagree.

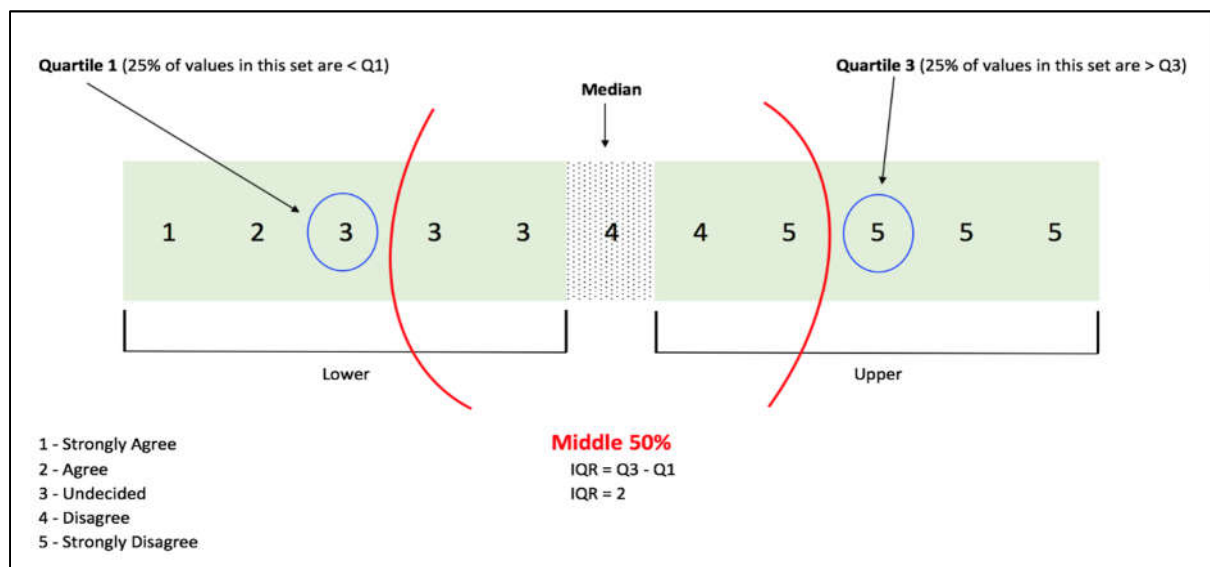


Figure 6. IQR as calculated from a Likert-type scale item.

Standard Deviation

Standard deviation will be used as an additional criterion to assess the level of consensus, ranging from none to high, and will supplement the IQR. Grobbelaar (2006) suggests classifying the level of agreement based on the range the standard deviation value falls. The author designates the highest level to be between 0 and one, similar to the sought range for IQR.

Percent Agreement

The second and third round questionnaires consisted of 5-point Likert point scale, with responses of Strongly Agree, Agree, Undecided, Disagree, and Strongly Disagree. A point value of 1-5 was assigned respectively. Avella (2016) comments that consensus does not necessarily mean 100% of the panel members agreed on an item, given the diversity of the group's viewpoints. The author cites typical Delphi consensus ranges from 55 to 100% agreement. Putman, Spiegel, and Bruininks (1995) collapsed the five categories of the Likert into three categories and considered consensus to be 80% agreement falling within two measures of the 5-point scale. As in the case for this study, the first two and last two categories were merged, which resulted in Agree, Neutral, and Disagree. *Table 1* represents the three methods that will be used for determining consensus.

Table 1

Three Measures to Assess Consensus

Parameter	Condition
Interquartile Range	$0 \leq \text{IQR} \leq 1$
Standard Deviation	$0 \leq \text{SD} \leq 1$ (<i>High level</i>) $1.01 \leq \text{SD} \leq 1.49$ (<i>Reasonable/fair level</i>) $1.5 \leq \text{SD} \leq 2$ (<i>Low level</i>)
% Agreement or Disagreement	$\geq 80\%$

Results

Twelve members (80%) completed the first round of open-ended questions to generate the preliminary data. The responses were coded and presented in the next round as 13 multipart questions, with a total of 54 items to evaluate. General themes that emerged were:

1. There is a lack of understanding of proper PANE assessment;
2. Time and copy limitations are dependent on different circumstances;
3. Faculty policies for copyrighted works should focus on permissions and fair use assessment;
4. Recent changes to DMCA policies for educators are still too limiting;
5. Specific portion limitations for copying may still be valid;
6. PANE assessments are still necessary for orphan works;
7. Future educators will still encounter problems with fully understanding fair use.

Round 2

One panelist asked to be released from the study due to workload commitments. Therefore, a total of 11 out of 14, or 79% of the participants completed questioning in this round. Responses were collected for the 54 items from a 5-point Likert scale and coded (1 = Strongly Agree, 2 = Agree, 3 = Undecided, 4 = Disagree, and 5 = Strongly Disagree). The researcher made an assessment to determine if each item had achieved a consensus by evaluating against the three measurements of IQR, standard deviation, and percentage of agreement. The comprehensive analysis is shown in *Table 2*. All percentage calculations are rounded to the nearest whole number.

Responses		Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a.	One academic year	4	3.0	1.30	1.50	27%	27%	45%	N
b.	Two to three years	5	4.0	1.25	2.00	9%	27%	64%	N
c.	Duration of teaching	3	4.0	1.44	1.50	18%	27%	55%	N
d.	Indefinitely	4	4.0	1.22	1.50	9%	18%	73%	N
e.	Should be based on fair use assessment	1	1.0	0.47	0.50	100%	0%	0%	Y, high

Question 5: The same time limits from Question #4 should also apply to synchronous and asynchronous distance education.

Responses		Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
1 = Strongly Agree (55%)		1	1.0	1.08	1.5	73%	18%	9%	N
2 = Agree (18%)									
3 = Undecided (18%)									
4 = Disagree (9%)									
5 = Strongly Disagree (0%)									

Question 6: How many copies, including the original, should an online educator be allowed to make for a multimedia project that was created with copyrighted materials?

Responses		Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a.	1	3	3.0	1.35	1.00	45%	36%	18%	N
b.	2	3	3.0	1.14	1.50	36%	36%	27%	N

c.	None	5	5.0	0.84	1.00	0%	18%	73%	N
d.	Should be based on fair use assessment	1	1.0	1.42	0.50	82%	0%	18%	Y, fair

Question 7: No exceptions should exist for the copy limitation from Question #6.

Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
1 = Strongly Agree (18%)	5	4.0	1.50	2.00	27%	18%	55%	N
2 = Agree (9%)								
3 = Undecided (18%)								
4 = Disagree (27%)								
5 = Strongly Disagree (27%)								

Question 8: What should an online education faculty policy cover for work-related downloading of multimedia content from the Internet?

Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a. Always attribute regardless where the materials are taken	1	1.0	0.50	1.00	100%	0%	0%	Y, high
b. Encourage users to link or embed rather than downloading	1	1.0	0.67	0.50	91%	9%	0%	Y, high
c. How to conduct a fair use assessment	1	1.0	0.82	0.50	82%	18%	0%	Y, high
d. Information relating to the Public Domain and Creative Commons licensing	1	1.0	0.69	1.00	91%	9%	0%	Y, high
e. Person to contact for all copyright and fair use questions	1	1.0	0.30	0.00	100%	0%	0%	Y, high

Question 9: What is the most important point an online education faculty policy should emphasize, in regard to distributing a multimedia project created with copyrighted works over the Internet?

	Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a.	Parameters for the use of the materials should be stressed	1	1.0	0.50	1.00	100%	0%	0%	Y, high
b.	Make sure the work is available for the intended audience	2	2.0	0.99	1.50	64%	18%	9%	N
c.	Stress that the availability to download or manipulate the materials may be outside of the copyright agreement	2	1.5	0.53	1.00	91%	0%	0%	Y, high
d.	Get it cleared by the university first	4	3.5	1.41	2.00	36%	9%	45%	N
e.	Conduct a fair use assessment before sharing the work online	1	1.0	0.84	1.00	73%	18%	0%	N
f.	The importance of obtaining copyright permission	1	2.0	1.34	2.75	55%	9%	27%	N
g.	Faculty members are financially liable for their actions	3	3.0	1.17	1.50	27%	45%	18%	N

Question 10: What should an online education faculty policy state in regard to altering copyrighted works that were added into a multimedia project?

	Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a.	If materials are 'adapted', this fact should be stated along with a full citation to the original	1	1.0	0.92	1.00	91%	0%	9%	Y, high
b.	Focus on transformativeness	1	1.0	1.45	2.00	64%	18%	18%	N
c.	Contact the copyright expert for questions	1	1.0	0.52	1.00	100%	0%	0%	Y, high
d.	A reminder about fair use and its four factors	1	2.0	0.79	1.00	82%	18%	0%	Y, high
e.	Academic use does not automatically mean fair use applies	1	1.0	0.69	1.00	91%	9%	0%	Y, high
f.	Discourage creating derivative works unless explicitly allowed by a license	4	4.0	1.03	1.00	18%	18%	64%	N

Question 11: For online educators, the recent changes to the DMCA are:

Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a. Too cumbersome	3	3.0	1.04	1.00	45%	36%	18%	N
b. Still too narrow	3	3.0	1.03	1.50	45%	45%	9%	N
c. Potentially limiting creativity	2	2.0	0.60	0.50	91%	9%	0%	Y, high
d. Still in need of revamping	1	2.0	0.67	1.00	91%	9%	0%	Y, high
e. Hard to enforce and have a detrimental impact on the use of copyrighted materials	2	2.0	1.21	1.00	64%	18%	18%	N
f. Unworkable and would seriously (and negatively) affect the current and appropriate balance	3	2.0	1.01	1.50	55%	36%	9%	N

Question 12: Portion limitations for online educators who would like to incorporate copyrighted media into their courses should be:

Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a. 5%	3	3.0	0.95	1.75	0%	55%	36%	N
b. 10%	3	3.0	1.32	1.75	27%	27%	36%	N
c. 100%	3	3.0	1.17	1.00	9%	45%	36%	N
d. Based upon fair use assessment	1	1.0	0.30	0.00	100%	0%	0%	Y, high

Question 13: An online educator should be allowed to use up to 100% of an orphan work since the original owner cannot be located.

Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
-----------	------	--------	----	-----	---------	-----------	------------	-----------

1 = Strongly Agree (9%)	3	3.0	1.17	0.50	18%	55%	27%	N
2 = Agree (9%)								
3 = Undecided (55%)								
4 = Disagree (9%)								
5 = Strongly Disagree (18%)								

Question 14: The biggest obstacle for online educators in the future for fair use is:

Responses		Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a.	Knowing how much material out of the total work is considered a fair use	2	2.0	1.01	0.50	73%	9%	18%	N
b.	Finding an easier way to do an informed fair use analysis	1	2.0	0.79	1.00	82%	18%	0%	Y, high
c.	The burden and high cost (in time and dollars) of locating rightful owners	1	2.0	1.37	2.00	55%	18%	27%	N
d.	Understanding it	1	1.0	0.92	1.00	91%	0%	9%	Y, high
e.	Trying to find the balance for authors and users of what maintains fair use	1	2.0	1.22	1.00	82%	9%	9%	Y, fair

It appears majority agreement was developing for certain items in this round.

Statistically, 23 out of the 54 items (43%) reached consensus in this round. Questions two and eight (Q2 and Q8) received satisfactory agreement for all items. High consensus was achieved with four of the six items for Q10. In general, levels for all items that reached consensus were high, except for two elements, Q6d and 14e, where agreement reached a reasonable or fair level. No consensus was reached for any item of Q3; the same outcome was observed for Q4 apart from one item.

Round 3

All 13 questions from Round 2 returned, minus one item. An initial inspection of the raw data revealed practically a 100% response of Strongly Agree for Q8d, so 53 total items were re-evaluated. Each respondent was presented an analysis of the group's median response for each item from Round 2, alongside his/her individual response. They were given the option to keep their original score, or revise it up or down in this round. This strategy allows participants an opportunity to rethink the questions while considering the group responses (Crews & Ray, 1998). Twelve participants (86%) completed this round, and generated the results in *Table 3*.

Table 3

Summary of Results for Delphi Round 3

n = 12

<i>Question 2: What is it about fair use that causes the most confusion for all distance and online educators, both full-time and adjunct?</i>									
Responses		Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a.	Ambiguous nature of the law	1	1.0	0.45	0.25	100%	0%	0%	Y, high
b.	Assumptions that everything is free to use	2	2.0	1.24	2.25	67%	0%	33%	N
c.	Lack of clear guidelines	1	1.0	0.65	0.25	92%	8%	0%	Y, high
d.	Understanding the basics of works, ownership, and rights	1	1.5	0.52	1.00	100%	0%	0%	Y, high
e.	Understanding how to apply the four factors, PANE	1	1.0	0.79	1.00	83%	17%	0%	Y, high

Question 3: How often should online educators be required to receive copyright training?

Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a. Annually	1	2.0	1.13	1.25	75%	8%	17%	N
b. Biannually/semiannually	2	2.0	1.64	2.50	58%	0%	42%	N
c. Every two to three years	2	3.0	1.28	2.00	50%	0%	50%	N
d. As needed	1	2.0	1.51	2.25	67%	8%	25%	N

Question 4: How long should online educators be able to use their multimedia projects that were created with copyrighted materials for teaching?

Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a. One academic year	3	3.0	1.14	1.00	33%	50%	17%	N
b. Two to three years	4	4.0	0.89	1.00	8%	33%	58%	N
c. Duration of teaching	3	3.0	1.08	1.25	33%	42%	25%	N
d. Indefinitely	3	3.5	1.31	2.00	17%	33%	50%	N
e. Should be based on fair use assessment	1	1.0	0.45	0.25	100%	0%	0%	Y, high

Question 5: The same time limits from Question #4 should also apply to synchronous and asynchronous distance education.

Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
1 = Strongly Agree (67%)	1	1.0	0.90	1.0	92%	0%	8%	Y, high
2 = Agree (25%)								
3 = Undecided (0%)								

4 = Disagree (8%)

5 = Strongly Disagree (0%)

Question 6: How many copies, including the original, should an online educator be allowed to make for a multimedia project that was created with copyrighted materials?

Responses		Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a.	1	1	2.0	1.19	2.00	67%	25%	8%	N
b.	2	3	3.0	1.08	1.25	25%	42%	33%	N
c.	None	5	4.5	0.94	2.00	0%	33%	67%	N
d.	Should be based on fair use assessment	1	1.0	0.90	1.00	92%	0%	8%	Y, high

Question 7: No exceptions should exist for the copy limitation from Question #6.

Responses		Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
1 = Strongly Agree (25%)		4	4.0	1.56	1.75	25%	17%	58%	N
2 = Agree (0%)									
3 = Undecided (17%)									
4 = Disagree (33%)									
5 = Strongly Disagree (25%)									

Question 8: What should an online education faculty policy cover for work-related downloading of multimedia content from the Internet?

Responses		Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
-----------	--	------	--------	----	-----	---------	-----------	------------	-----------

a.	Always attribute regardless where the materials are taken	1	1.0	0.65	0.25	92%	8%	0%	Y, high
b.	Encourage users to link or embed rather than downloading	1	1.0	0.67	1.00	92%	8%	0%	Y, high
c.	How to conduct a fair use assessment	1	1.0	0.79	0.25	83%	17%	0%	Y, high
d.	Information relating to the Public Domain and Creative Commons licensing	1	1.0	0.62	0.00	92%	8%	0%	Y, high

Question 9: What is the most important point an online education faculty policy should emphasize, in regard to distributing a multimedia project created with copyrighted works over the Internet?

Responses		Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a.	Parameters for the use of the materials should be stressed	1	1.5	0.67	1.00	92%	8%	0%	Y, high
b.	Make sure the work is available for the intended audience	2	2.0	0.79	1.25	75%	25%	0%	N
c.	Stress that the availability to download or manipulate the materials may be outside of the copyright agreement	1	1.0	0.98	1.00	83%	8%	8%	Y, high
d.	Get it cleared by the university first	4	4.0	1.42	2.00	33%	8%	58%	N
e.	Conduct a fair use assessment before sharing the work online	1	1.0	0.65	0.25	92%	8%	0%	Y, high
f.	The importance of obtaining copyright permission	1	2.0	1.44	2.25	58%	17%	25%	N
g.	Faculty members are financially liable for their actions	2	2.5	1.29	2.00	50%	17%	33%	N

Question 10: What should an online education faculty policy state in regard to altering copyrighted works that were added into a multimedia project?

Responses		Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a.	If materials are 'adapted', this fact should be stated along with a full citation to the original	2	2.0	0.90	1.00	83%	8%	8%	Y, high

b.	Focus on transformativeness	1	1.0	1.27	1.25	75%	17%	8%	N
c.	Contact the copyright expert for questions	1	1.0	0.79	1.00	83%	17%	0%	Y, high
d.	A reminder about fair use and its four factors	1	1.0	0.90	1.00	92%	0%	8%	Y, high
e.	Academic use does not automatically mean fair use applies	1	1.0	0.45	0.25	100%	0%	0%	Y, high
f.	Discourage creating derivative works unless explicitly allowed by a license	4	4.0	0.90	1.00	8%	8%	83%	Y, high

Question 11: For online educators, the recent changes to the DMCA are:

Responses		Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a.	Too cumbersome	2	2.0	0.79	1.25	75%	25%	0%	N
b.	Still too narrow	1	2.0	0.83	1.25	75%	25%	0%	N
c.	Potentially limiting creativity	1	2.0	1.04	2.00	67%	25%	8%	N
d.	Still in need of revamping	1	1.0	0.79	1.00	83%	17%	0%	Y, high
e.	Hard to enforce and have a detrimental impact on the use of copyrighted materials	1	2.0	1.03	2.00	58%	33%	8%	N
f.	Unworkable and would seriously (and negatively) affect the current and appropriate balance	1	2.0	1.16	2.00	67%	17%	17%	N

Question 12: Portion limitations for online educators who would like to incorporate copyrighted media into their courses should be:

Responses		Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a.	5%	3	3.0	1.07	1.25	25%	33%	42%	N

b.	10%	3	3.0	1.06	1.25	25%	42%	33%	N
c.	100%	3	3.0	1.15	1.00	17%	42%	42%	N
d.	Based upon fair use assessment	1	1.0	0.58	0.00	92%	8%	0%	Y, high

Question 13: An online educator should be allowed to use up to 100% of an orphan work since the original owner cannot be located.

Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
1 = Strongly Agree (25%)	4	3.5	1.41	2.25	33%	17%	50%	N
2 = Agree (8%)								
3 = Undecided (17%)								
4 = Disagree (42%)								
5 = Strongly Disagree (8%)								

Question 14: The biggest obstacle for online educators in the future for fair use is:

Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a. Knowing how much material out of the total work is considered a fair use	2	2.0	0.65	1.00	92%	8%	0%	Y, high
b. Finding an easier way to do an informed fair use analysis	1	1.0	0.67	1.00	92%	8%	0%	Y, high
c. The burden and high cost (in time and dollars) of locating rightful owners	2	2.5	1.06	2.00	50%	17%	33%	N
d. Understanding it	1	1.0	0.39	0.00	100%	0%	0%	Y, high
e. Trying to find the balance for authors and users of what maintains fair use	1	1.5	0.97	1.00	83%	8%	8%	Y, high

Twenty-five of the 53 items (47%) reached consensus, versus the 44% from Round 2.

Outcomes were different for five items from four questions. Consensus levels changed from fair to high for Q6d, none to high for Q10f, high to none for Q11c, none to high for Q14a, and fair to high for Q14e. Only one item, Q10f, received consensus for disagreement. A comparison for the other parameters are illustrated in *Table 4*.

Table 4

Comparison Metrics for Round 2 and Round 3

	SD		IQR		% Agreement		% Disagreement		Consensus	
	Round 2	Round 3	Round 2	Round 3	Round 2	Round 3	Round 2	Round 3		
Q2	a	0.52	0.45	1.00	0.25	100%	100%	0%	0%	Y
	b	0.92	1.24	1.00	2.25	91%	67%	9%	33%	N
	c	0.79	0.65	1.00	0.25	82%	92%	0%	0%	Y
	d	0.52	0.52	1.00	1.00	100%	100%	0%	0%	Y
	e	0.81	0.79	1.00	1.00	82%	83%	0%	0%	Y
Q3	a	1.14	1.13	1.50	1.25	73%	75%	18%	17%	N
	b	1.12	1.64	2.00	2.50	64%	58%	36%	42%	N
	c	1.43	1.28	1.50	2.00	27%	50%	64%	50%	N
	d	1.57	1.51	2.50	2.25	64%	67%	27%	25%	N
Q4	a	1.30	1.14	1.50	1.00	27%	33%	45%	17%	N
	b	1.25	0.89	2.00	1.00	9%	8%	64%	58%	N
	c	1.44	1.08	1.50	1.25	18%	33%	55%	25%	N
	d	1.22	1.31	1.50	2.00	9%	17%	73%	50%	N
	e	0.47	0.45	0.50	0.25	100%	100%	0%	0%	Y

Q6	Q5	1.08	0.90	1.5	1.0	73%	92%	9%	8%	Y
	a	1.35	1.19	1.00	2.00	45%	67%	18%	8%	N
	b	1.14	1.08	1.50	1.25	36%	25%	27%	33%	N
	c	0.84	0.94	1.00	2.00	0%	0%	73%	67%	N
	d	1.42	0.90	0.50	1.00	82%	92%	18%	8%	Y
Q8	Q7	1.50	1.56	2.00	1.75	27%	25%	55%	58%	N
	a	0.50	0.65	1.00	0.25	100%	92%	0%	0%	Y
	b	0.67	0.67	0.50	1.00	91%	92%	0%	0%	Y
	c	0.82	0.79	0.50	0.25	82%	83%	0%	0%	Y
	d	0.69	0.62	1.00	0.00	91%	92%	0%	0%	Y
Q9	e	0.30	-	0.00	-	100%	-	0%	-	Y
	a	0.50	0.67	1.00	1.00	100%	92%	0%	0%	Y
	b	0.99	0.79	1.50	1.25	64%	75%	9%	0%	N
	c	0.53	0.98	1.00	1.00	91%	83%	0%	8%	Y
	d	1.41	1.42	2.00	2.00	36%	33%	45%	58%	N
Q10	e	0.84	0.65	1.00	0.25	73%	92%	0%	0%	Y
	f	1.37	1.44	2.75	2.25	55%	58%	27%	25%	N
	g	1.17	1.29	1.50	2.00	27%	50%	18%	33%	N
	a	0.92	0.90	1.00	1.00	91%	83%	9%	8%	Y
	b	1.45	1.27	2.00	1.25	64%	75%	18%	8%	N
Q10	c	0.52	0.79	1.00	1.00	100%	83%	0%	0%	Y
	d	0.79	0.90	1.00	1.00	82%	92%	0%	8%	Y

	e	0.69	0.45	1.00	0.25	91%	100%	0%	0%	Y
	f	1.03	0.90	1.00	1.00	18%	8%	64%	83%	*Y
Q11	a	1.04	0.79	1.00	1.25	45%	75%	18%	0%	N
	b	1.03	0.83	1.50	1.25	45%	75%	9%	0%	N
	c	0.60	1.04	0.50	2.00	91%	67%	0%	8%	N
	d	0.67	0.79	1.00	1.00	91%	83%	0%	0%	Y
	e	1.21	1.03	1.00	2.00	64%	58%	18%	8%	N
	f	1.01	1.16	1.50	2.00	55%	67%	9%	17%	N
Q12	a	0.95	1.07	1.75	1.25	0%	25%	36%	42%	N
	b	1.32	1.06	1.75	1.25	27%	25%	36%	33%	N
	c	1.17	1.15	1.00	1.00	9%	17%	36%	42%	N
	d	0.30	0.58	0.00	0.00	100%	92%	0%	0%	Y
Q14	Q1 3	1.17	1.41	0.50	2.25	18%	33%	27%	50%	N
	a	1.01	0.65	0.50	1.00	73%	92%	18%	0%	Y
	b	0.79	0.67	1.00	1.00	82%	92%	0%	0%	Y
	c	1.37	1.06	2.00	2.00	55%	50%	27%	33%	N
	d	0.92	0.39	1.00	0.00	91%	100%	9%	0%	Y
	e	1.22	0.97	1.00	1.00	82%	83%	9%	8%	Y

Overall agreement or disagreement based on the topic areas fair use in general and future outlook is summarized in *Figure 7*.

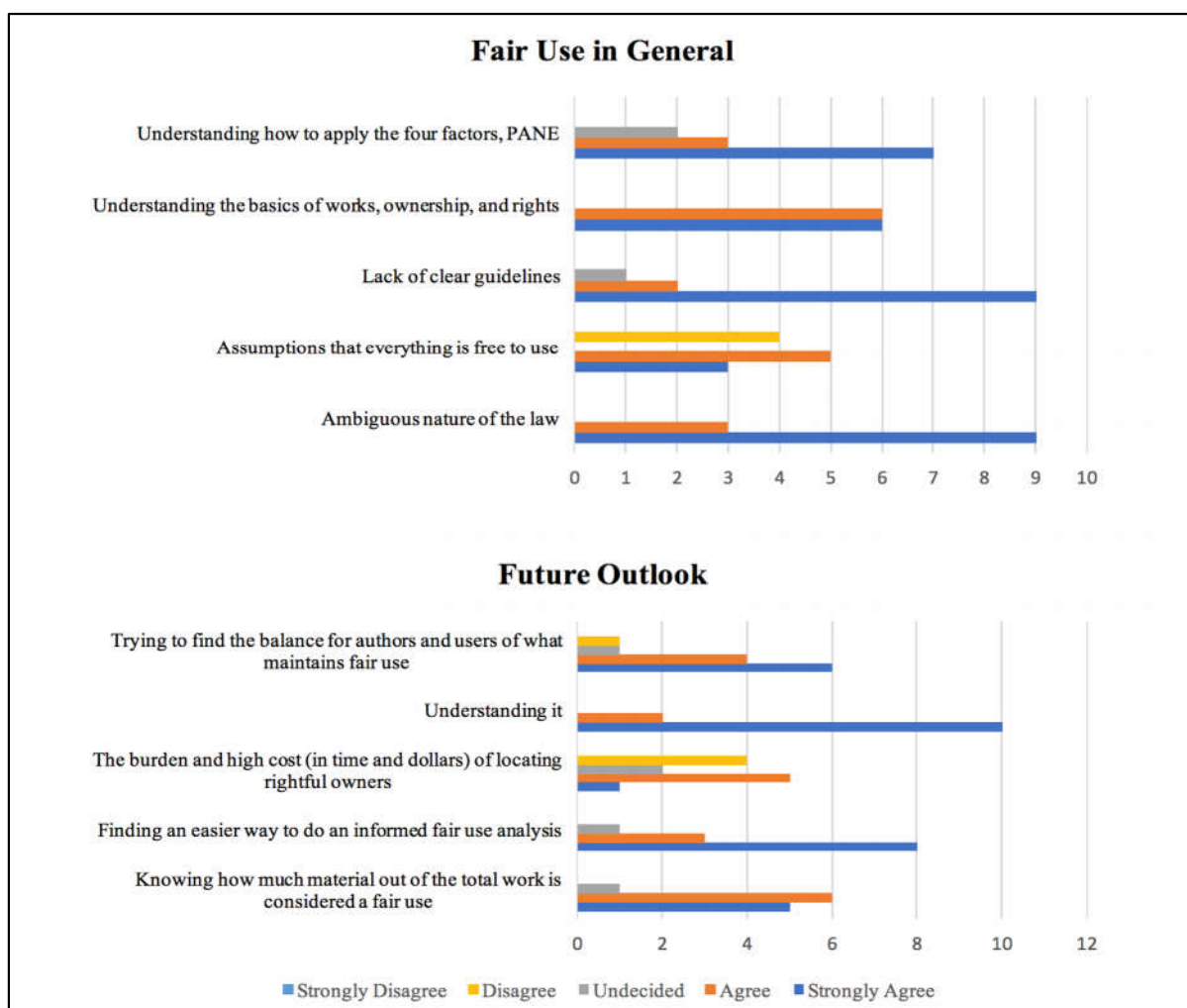


Figure 7. Summary of responses to question “what is it about fair use that causes the most confusion for all distance and online educators, both fulltime and adjunct,” and statement “the biggest obstacle for online educators in the future for fair use.”

Conclusion

The data have been carefully evaluated from all three rounds. Based on the results, the expert panel’s opinions converged on nearly half the items when the Likert scale was collapsed from five to three categories of Agree, Neutral, and Disagree. Items that underwent a change of no consensus in Round 2, to high in Round 3, did so with a

significant change in agreement. For example, Q6d changed from 82% to 92% agree, and even though the IQR increased from 0.5 to 1, consensus still holds. The decrease in SD further illustrates the change in strength for the item, as variance of the data lessens from the median. Interestingly, opinions shifted between the two rounds for Q11c. The majority were originally in agreement while no one expressed disagreement. That changed significantly in the last round, when four respondents disagreed or became neutral on the item.

An inventory of the opinions for the topics is presented in the outline that follows. List items receiving the highest levels of consensus based on SD, IQR, and % Agreement are in bold.

I. Fair Use in General

A. Distance and online educators, both fulltime and adjunct, experience the most confusion for fair use due to

1. The ambiguous nature of the law

2. The assumptions that everything is free to use
3. The lack of clear guidelines
4. The lack of understanding the basics of works, ownership, and rights
5. The lack of understanding how the four factors for fair use assessment, PANE, are applied

B. No consensus was reached for the frequency online educators should receive copyright training

1. The closest agreements were in support of annual training

II. Time Limitations

- A. Online educators should be allowed to use multimedia projects created with copyrighted materials for teaching purposes for a period of time
 - 1. The time should be based on a fair use assessment
 - 2. The same fair use-assessed time limitations should also apply to synchronous and asynchronous distance education

III. Copying and Distribution Limitations

- A. The number of copies an online educator should be allowed to make of a multimedia project created with copyrighted materials
 - 1. Should be based on a fair use assessment
 - 2. No consensus in agreement or disagreement was reached regarding whether any exceptions should exist to these copy limitations
- B. An online education faculty policy should include information that covers work-related downloading of multimedia content from the Internet such as
 - 1. Faculty should always attribute regardless where the materials are taken
 - 2. Encouraging users to link or embed rather than downloading
 - 3. How to properly conduct a fair use assessment
 - 4. Information relating to the Public Domain and Creative Commons licensing
 - 5. The person to contact for all copyright and fair use questions**
- C. Regarding distributing a multimedia project created with copyrighted works over the Internet, important points an online education faculty policy should emphasize are
 - 1. The parameters for the use of the materials should be stressed

2. To make sure the work is available for the intended audience

3. Conduct a fair use assessment before sharing the work online

D. An online education faculty policy should cover the altering of copyrighted works added into a multimedia project by stating

1. If materials are “adapted”, this fact should be stated along with a full citation to the original

2. Contact the copyright expert for questions

3. A reminder about fair use and its four factors

4. Academic use does not automatically mean fair use applies

E. For online educators, the recent changes to the DMCA are still in need of revamping

IV. Portion Limitations

A. Portion limitations for online educators desiring to incorporate copyrighted media into their courses should be based upon fair use assessment instead of percentages

B. No agreement exists for whether an online educator should be allowed to use up to 100% of orphan works

V. Future Outlook

A. The biggest obstacles for fair use online educators will face in the future are

1. Knowing how much material out of the total work is considered a fair use

2. Finding an easier way to do an informed fair use analysis

3. Understanding it

4. Trying to find the balance for authors and users of what maintains fair use

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Appendix R

Delphi Round 2 Statistical Findings

Table 4

Summary of Statistics for Delphi Round 2

n = 11

Question 2: What is it about fair use that causes the most confusion for all distance and online educators, both full-time and adjunct?								
Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a. Ambiguous nature of the law	1	1.0	0.52	1.00	100%	0%	0%	Y, high
b. Assumptions that everything is free to use	1	1.0	0.92	1.00	91%	0%	9%	Y, high
c. Lack of clear guidelines	1	2.0	0.79	1.00	82%	18%	0%	Y, high
d. Understanding the basics of works, ownership, and rights	2	2.0	0.52	1.00	100%	0%	0%	Y, high
e. Understanding how to apply the four factors, PANE	1	1.0	0.81	1.00	82%	18%	0%	Y, high

Question 3: How often should online educators be required to receive copyright training?								
Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a. Annually	2	2.0	1.14	1.50	73%	9%	18%	N
b. Biannually/semiannually	2	2.0	1.12	2.00	64%	0%	36%	N
c. Every two to three years	4	4.0	1.43	1.50	27%	9%	64%	N
d. As needed	1	2.0	1.57	2.50	64%	9%	27%	N

Question 4: How long should online educators be able to use their multimedia projects that were created with copyrighted materials for teaching?

Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a. One academic year	4	3.0	1.30	1.50	27%	27%	45%	N
b. Two to three years	5	4.0	1.25	2.00	9%	27%	64%	N
c. Duration of teaching	3	4.0	1.44	1.50	18%	27%	55%	N
d. Indefinitely	4	4.0	1.22	1.50	9%	18%	73%	N
e. Should be based on fair use assessment	1	1.0	0.47	0.50	100%	0%	0%	Y, high

Question 5: The same time limits from Question #4 should also apply to synchronous and asynchronous distance education.

Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
1 = Strongly Agree (55%)	1	1.0	1.08	1.5	73%	18%	9%	N
2 = Agree (18%)								
3 = Undecided (18%)								
4 = Disagree (9%)								
5 = Strongly Disagree (0%)								

Question 6: How many copies, including the original, should an online educator be allowed to make for a multimedia project that was created with copyrighted materials?

Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
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a.	1	3	3.0	1.35	1.00	45%	36%	18%	N
b.	2	3	3.0	1.14	1.50	36%	36%	27%	N
c.	None	5	5.0	0.84	1.00	0%	18%	73%	N
d.	Should be based on fair use assessment	1	1.0	1.42	0.50	82%	0%	18%	Y, fair

Question 7: No exceptions should exist for the copy limitation from Question #6.

Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
1 = Strongly Agree (18%)	5	4.0	1.50	2.00	27%	18%	55%	N
2 = Agree (9%)								
3 = Undecided (18%)								
4 = Disagree (27%)								
5 = Strongly Disagree (27%)								

Question 8: What should an online education faculty policy cover for work-related downloading of multimedia content from the Internet?

Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a. Always attribute regardless where the materials are taken	1	1.0	0.50	1.00	100%	0%	0%	Y, high
b. Encourage users to link or embed rather than downloading	1	1.0	0.67	0.50	91%	9%	0%	Y, high
c. How to conduct a fair use assessment	1	1.0	0.82	0.50	82%	18%	0%	Y, high
d. Information relating to the Public Domain and Creative Commons licensing	1	1.0	0.69	1.00	91%	9%	0%	Y, high
e. Person to contact for all copyright and fair use questions	1	1.0	0.30	0.00	100%	0%	0%	Y, high

Question 9: What is the most important point an online education faculty policy should emphasize, in regard to distributing a multimedia project created with copyrighted works over the Internet?

	Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a.	Parameters for the use of the materials should be stressed	1	1.0	0.50	1.00	100%	0%	0%	Y, high
b.	Make sure the work is available for the intended audience	2	2.0	0.99	1.50	64%	18%	9%	N
c.	Stress that the availability to download or manipulate the materials may be outside of the copyright agreement	2	1.5	0.53	1.00	91%	0%	0%	Y, high
d.	Get it cleared by the university first	4	3.5	1.41	2.00	36%	9%	45%	N
e.	Conduct a fair use assessment before sharing the work online	1	1.0	0.84	1.00	73%	18%	0%	N
f.	The importance of obtaining copyright permission	1	2.0	1.34	2.75	55%	9%	27%	N
g.	Faculty members are financially liable for their actions	3	3.0	1.17	1.50	27%	45%	18%	N

Question 10: What should an online education faculty policy state in regard to altering copyrighted works that were added into a multimedia project?

	Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a.	If materials are 'adapted', this fact should be stated along with a full citation to the original	1	1.0	0.92	1.00	91%	0%	9%	Y, high
b.	Focus on transformativeness	1	1.0	1.45	2.00	64%	18%	18%	N
c.	Contact the copyright expert for questions	1	1.0	0.52	1.00	100%	0%	0%	Y, high
d.	A reminder about fair use and its four factors	1	2.0	0.79	1.00	82%	18%	0%	Y, high
e.	Academic use does not automatically mean fair use applies	1	1.0	0.69	1.00	91%	9%	0%	Y, high
f.	Discourage creating derivative works unless explicitly allowed by a license	4	4.0	1.03	1.00	18%	18%	64%	N

Question 11: For online educators, the recent changes to the DMCA are:

	Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a.	Too cumbersome	3	3.0	1.04	1.00	45%	36%	18%	N
b.	Still too narrow	3	3.0	1.03	1.50	45%	45%	9%	N
c.	Potentially limiting creativity	2	2.0	0.60	0.50	91%	9%	0%	Y, high
d.	Still in need of revamping	1	2.0	0.67	1.00	91%	9%	0%	Y, high
e.	Hard to enforce and have a detrimental impact on the use of copyrighted materials	2	2.0	1.21	1.00	64%	18%	18%	N
f.	Unworkable and would seriously (and negatively) affect the current and appropriate balance	3	2.0	1.01	1.50	55%	36%	9%	N

Question 12: Portion limitations for online educators who would like to incorporate copyrighted media into their courses should be:

	Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a.	5%	3	3.0	0.95	1.75	0%	55%	36%	N
b.	10%	3	3.0	1.32	1.75	27%	27%	36%	N
c.	100%	3	3.0	1.17	1.00	9%	45%	36%	N
d.	Based upon fair use assessment	1	1.0	0.30	0.00	100%	0%	0%	Y, high

Question 13: An online educator should be allowed to use up to 100% of an orphan work since the original owner cannot be located.

Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
1 = Strongly Agree (9%)	3	3.0	1.17	0.50	18%	55%	27%	N
2 = Agree (9%)								
3 = Undecided (55%)								
4 = Disagree (9%)								
5 = Strongly Disagree (18%)								

Question 14: The biggest obstacle for online educators in the future for fair use is:

Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a. Knowing how much material out of the total work is considered a fair use	2	2.0	1.01	0.50	73%	9%	18%	N
b. Finding an easier way to do an informed fair use analysis	1	2.0	0.79	1.00	82%	18%	0%	Y, high
c. The burden and high cost (in time and dollars) of locating rightful owners	1	2.0	1.37	2.00	55%	18%	27%	N
d. Understanding it	1	1.0	0.92	1.00	91%	0%	9%	Y, high
e. Trying to find the balance for authors and users of what maintains fair use	1	2.0	1.22	1.00	82%	9%	9%	Y, fair

Appendix S

Delphi Round 3 Statistical Findings

Table 5

Summary of Statistics for Delphi Round 3

n = 12

Question 2: What is it about fair use that causes the most confusion for all distance and online educators, both full-time and adjunct?								
Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a. Ambiguous nature of the law	1	1.0	0.45	0.25	100%	0%	0%	Y, high
b. Assumptions that everything is free to use	2	2.0	1.24	2.25	67%	0%	33%	N
c. Lack of clear guidelines	1	1.0	0.65	0.25	92%	8%	0%	Y, high
d. Understanding the basics of works, ownership, and rights	1	1.5	0.52	1.00	100%	0%	0%	Y, high
e. Understanding how to apply the four factors, PANE	1	1.0	0.79	1.00	83%	17%	0%	Y, high

Question 3: How often should online educators be required to receive copyright training?								
Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a. Annually	1	2.0	1.13	1.25	75%	8%	17%	N
b. Biannually/semiannually	2	2.0	1.64	2.50	58%	0%	42%	N
c. Every two to three years	2	3.0	1.28	2.00	50%	0%	50%	N
d. As needed	1	2.0	1.51	2.25	67%	8%	25%	N

Question 4: How long should online educators be able to use their multimedia projects that were created with copyrighted materials for teaching?

Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a. One academic year	3	3.0	1.14	1.00	33%	50%	17%	N
b. Two to three years	4	4.0	0.89	1.00	8%	33%	58%	N
c. Duration of teaching	3	3.0	1.08	1.25	33%	42%	25%	N
d. Indefinitely	3	3.5	1.31	2.00	17%	33%	50%	N
e. Should be based on fair use assessment	1	1.0	0.45	0.25	100%	0%	0%	Y, high

Question 5: The same time limits from Question #4 should also apply to synchronous and asynchronous distance education.

Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
1 = Strongly Agree (55%)	1	1.0	0.90	1.0	92%	0%	8%	Y, high
2 = Agree (18%)								
3 = Undecided (18%)								
4 = Disagree (9%)								
5 = Strongly Disagree (0%)								

Question 6: How many copies, including the original, should an online educator be allowed to make for a multimedia project that was created with copyrighted materials?

Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
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a.	1	1	2.0	1.19	2.00	67%	25%	8%	N
b.	2	3	3.0	1.08	1.25	25%	42%	33%	N
c.	None	5	4.5	0.94	2.00	0%	33%	67%	N
d.	Should be based on fair use assessment	1	1.0	0.90	1.00	92%	0%	8%	Y, high

Question 7: No exceptions should exist for the copy limitation from Question #6.

Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
1 = Strongly Agree (18%)	4	4.0	1.56	1.75	25%	17%	58%	N
2 = Agree (9%)								
3 = Undecided (18%)								
4 = Disagree (27%)								
5 = Strongly Disagree (27%)								

Question 8: What should an online education faculty policy cover for work-related downloading of multimedia content from the Internet?

Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a. Always attribute regardless where the materials are taken	1	1.0	0.65	0.25	92%	8%	0%	Y, high
b. Encourage users to link or embed rather than downloading	1	1.0	0.67	1.00	92%	8%	0%	Y, high
c. How to conduct a fair use assessment	1	1.0	0.79	0.25	83%	17%	0%	Y, high
d. Information relating to the Public Domain and Creative Commons licensing	1	1.0	0.62	0.00	92%	8%	0%	Y, high

Question 9: What is the most important point an online education faculty policy should emphasize, in regard to distributing a multimedia project created with copyrighted works over the Internet?

	Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a.	Parameters for the use of the materials should be stressed	1	1.5	0.67	1.00	92%	8%	0%	Y, high
b.	Make sure the work is available for the intended audience	2	2.0	0.79	1.25	75%	25%	0%	N
c.	Stress that the availability to download or manipulate the materials may be outside of the copyright agreement	1	1.0	0.98	1.00	83%	8%	8%	Y, high
d.	Get it cleared by the university first	4	4.0	1.42	2.00	33%	8%	58%	N
e.	Conduct a fair use assessment before sharing the work online	1	1.0	0.65	0.25	92%	8%	0%	Y, high
f.	The importance of obtaining copyright permission	1	2.0	1.44	2.25	58%	17%	25%	N
g.	Faculty members are financially liable for their actions	2	2.5	1.29	2.00	50%	17%	33%	N

Question 10: What should an online education faculty policy state in regard to altering copyrighted works that were added into a multimedia project?

	Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a.	If materials are 'adapted', this fact should be stated along with a full citation to the original	2	2.0	0.90	1.00	83%	8%	8%	Y, high
b.	Focus on transformativeness	1	1.0	1.27	1.25	75%	17%	8%	N
c.	Contact the copyright expert for questions	1	1.0	0.79	1.00	83%	17%	0%	Y, high
d.	A reminder about fair use and its four factors	1	1.0	0.90	1.00	92%	0%	8%	Y, high
e.	Academic use does not automatically mean fair use applies	1	1.0	0.45	0.25	100%	0%	0%	Y, high
f.	Discourage creating derivative works unless explicitly allowed by a license	4	4.0	0.90	1.00	8%	8%	83%	Y, high

Question 11: For online educators, the recent changes to the DMCA are:

Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a. Too cumbersome	2	2.0	0.79	1.25	75%	25%	0%	N
b. Still too narrow	1	2.0	0.83	1.25	75%	25%	0%	N
c. Potentially limiting creativity	1	2.0	1.04	2.00	67%	25%	8%	N
d. Still in need of revamping	1	1.0	0.79	1.00	83%	17%	0%	Y, high
e. Hard to enforce and have a detrimental impact on the use of copyrighted materials	1	2.0	1.03	2.00	58%	33%	8%	N
f. Unworkable and would seriously (and negatively) affect the current and appropriate balance	1	2.0	1.16	2.00	67%	17%	17%	N

Question 12: Portion limitations for online educators who would like to incorporate copyrighted media into their courses should be:

Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a. 5%	3	3.0	1.07	1.25	25%	33%	42%	N
b. 10%	3	3.0	1.06	1.25	25%	42%	33%	N
c. 100%	3	3.0	1.15	1.00	17%	42%	42%	N
d. Based upon fair use assessment	1	1.0	0.58	0.00	92%	8%	0%	Y, high

Question 13: An online educator should be allowed to use up to 100% of an orphan work since the original owner cannot be located.

Responses	Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
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1 = Strongly Agree (9%)	4	3.5	1.41	2.25	33%	17%	50%	N
2 = Agree (9%)								
3 = Undecided (55%)								
4 = Disagree (9%)								
5 = Strongly Disagree (18%)								

Question 14: The biggest obstacle for online educators in the future for fair use is:

Responses		Mode	Median	SD	IQR	% Agree	% Neutral	% Disagree	Consensus
a.	Knowing how much material out of the total work is considered a fair use	2	2.0	0.65	1.00	92%	8%	0%	Y, high
b.	Finding an easier way to do an informed fair use analysis	1	1.0	0.67	1.00	92%	8%	0%	Y, high
c.	The burden and high cost (in time and dollars) of locating rightful owners	2	2.5	1.06	2.00	50%	17%	33%	N
d.	Understanding it	1	1.0	0.39	0.00	100%	0%	0%	Y, high
e.	Trying to find the balance for authors and users of what maintains fair use	1	1.5	0.97	1.00	83%	8%	8%	Y, high

Appendix T

Delphi Rounds 2 and 3 Statistical Findings Comparison

Table 6

Comparison Summary of Statistics for Delphi Rounds 2 and 3

	SD		IQR		% Agreement		% Disagreement		Consensus	
	Round 2	Round 3	Round 2	Round 3	Round 2	Round 3	Round 2	Round 3		
Q2	a	0.52	0.45	1.00	0.25	100%	100%	0%	0%	Y
	b	0.92	1.24	1.00	2.25	91%	67%	9%	33%	N
	c	0.79	0.65	1.00	0.25	82%	92%	0%	0%	Y
	d	0.52	0.52	1.00	1.00	100%	100%	0%	0%	Y
	e	0.81	0.79	1.00	1.00	82%	83%	0%	0%	Y
Q3	a	1.14	1.13	1.50	1.25	73%	75%	18%	17%	N
	b	1.12	1.64	2.00	2.50	64%	58%	36%	42%	N
	c	1.43	1.28	1.50	2.00	27%	50%	64%	50%	N
	d	1.57	1.51	2.50	2.25	64%	67%	27%	25%	N
Q4	a	1.30	1.14	1.50	1.00	27%	33%	45%	17%	N
	b	1.25	0.89	2.00	1.00	9%	8%	64%	58%	N
	c	1.44	1.08	1.50	1.25	18%	33%	55%	25%	N
	d	1.22	1.31	1.50	2.00	9%	17%	73%	50%	N
	e	0.47	0.45	0.50	0.25	100%	100%	0%	0%	Y
Q5	1.08	0.90	1.5	1.0	73%	92%	9%	8%	Y	

Q6	a	1.35	1.19	1.00	2.00	45%	67%	18%	8%	N
	b	1.14	1.08	1.50	1.25	36%	25%	27%	33%	N
	c	0.84	0.94	1.00	2.00	0%	0%	73%	67%	N
	d	1.42	0.90	0.50	1.00	82%	92%	18%	8%	Y
Q7		1.50	1.56	2.00	1.75	27%	25%	55%	58%	N
Q8	a	0.50	0.65	1.00	0.25	100%	92%	0%	0%	Y
	b	0.67	0.67	0.50	1.00	91%	92%	0%	0%	Y
	c	0.82	0.79	0.50	0.25	82%	83%	0%	0%	Y
	d	0.69	0.62	1.00	0.00	91%	92%	0%	0%	Y
	e	0.30	-	0.00	-	100%	-	0%	-	Y
Q9	a	0.50	0.67	1.00	1.00	100%	92%	0%	0%	Y
	b	0.99	0.79	1.50	1.25	64%	75%	9%	0%	N
	c	0.53	0.98	1.00	1.00	91%	83%	0%	8%	Y
	d	1.41	1.42	2.00	2.00	36%	33%	45%	58%	N
	e	0.84	0.65	1.00	0.25	73%	92%	0%	0%	Y
	f	1.37	1.44	2.75	2.25	55%	58%	27%	25%	N
	g	1.17	1.29	1.50	2.00	27%	50%	18%	33%	N
Q10	a	0.92	0.90	1.00	1.00	91%	83%	9%	8%	Y
	b	1.45	1.27	2.00	1.25	64%	75%	18%	8%	N
	c	0.52	0.79	1.00	1.00	100%	83%	0%	0%	Y
	d	0.79	0.90	1.00	1.00	82%	92%	0%	8%	Y
	e	0.69	0.45	1.00	0.25	91%	100%	0%	0%	Y
	f	1.03	0.90	1.00	1.00	18%	8%	64%	83%	Y

Q11	a	1.04	0.79	1.00	1.25	45%	75%	18%	0%	N
	b	1.03	0.83	1.50	1.25	45%	75%	9%	0%	N
	c	0.60	1.04	0.50	2.00	91%	67%	0%	8%	N
	d	0.67	0.79	1.00	1.00	91%	83%	0%	0%	Y
	e	1.21	1.03	1.00	2.00	64%	58%	18%	8%	N
	f	1.01	1.16	1.50	2.00	55%	67%	9%	17%	N
Q12	a	0.95	1.07	1.75	1.25	0%	25%	36%	42%	N
	b	1.32	1.06	1.75	1.25	27%	25%	36%	33%	N
	c	1.17	1.15	1.00	1.00	9%	17%	36%	42%	N
	d	0.30	0.58	0.00	0.00	100%	92%	0%	0%	Y
Q14	Q13	1.17	1.41	0.50	2.25	18%	33%	27%	50%	N
	a	1.01	0.65	0.50	1.00	73%	92%	18%	0%	Y
	b	0.79	0.67	1.00	1.00	82%	92%	0%	0%	Y
	c	1.37	1.06	2.00	2.00	55%	50%	27%	33%	N
	d	0.92	0.39	1.00	0.00	91%	100%	9%	0%	Y
	e	1.22	0.97	1.00	1.00	82%	83%	9%	8%	Y

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