

New copyright regulations

by *Gavin Baker*, information technology policy analyst

Starting July 1, new copyright regulations will apply to colleges and universities that participate in federal student aid programs. These new regulations implement provisions of the Higher Education Opportunity Act of 2008 (HEOA) relating to copyright infringement on campus networks.

HEOA was a wide-ranging bill to reauthorize the Higher Education Act of 1965, which affects many aspects of higher education. For instance, HEOA extended student loan forgiveness to certain librarians, particularly school and public librarians working in low-income communities. HEOA also contains provisions to control the cost of college textbooks, including requiring advance disclosure of the required texts for a class and their prices.

In addition to the other provisions, HEOA enacts three new requirements for colleges and universities relating to copyright, ultimately aimed at combating illegal peer-to-peer file sharing.

- Colleges and universities must notify students annually about penalties for violating federal copyright law, as well as campus policies related to copyright infringement.

- Colleges and universities must develop plans to “effectively combat the unauthorized distribution of copyrighted materials” by users of its network, including using “technology-based deterrents.” Such deterrents include bandwidth shaping, traffic monitoring, responding to infringement complaints filed under the Digital Millennium Copyright Act (DMCA), and commercial products designed to reduce or block unauthorized file sharing.

- Colleges and universities must offer alternatives to illegal downloading.”

Each of these newly enacted provisions will require colleges and universities to engage in

copyright infringement deterring activities, if they do not do so already. However, the law does provide colleges and universities considerable flexibility in how to comply with the new requirements. Consequently, the impact of the new law could be chilling or fairly benign: it depends on what individual institutions choose.

Academic librarians can play a role in mitigating the potential harm of heavy-handed implementations. By engaging with those involved in the shaping and implementing the compliance process on their campuses, librarians can help ensure that policies are consistent with fair use and other copyright principles of their profession.

Librarians can also help inform disciplinary measures under campus policies to ensure they are proportionate and not excessively punitive. To disconnect a student from the Internet upon the mere accusation of infringement, for instance, is to disconnect him or her from classes, research, friends, family, hobbies, health and safety information, and more.

Librarians can also make sure that students are informed of their rights under such policies, to mitigate any potential negative impacts on information access. For instance, students should have meaningful opportunity to avail themselves of the counter-notice provisions of the DMCA. For example, with respect to the required annual notice informing students what is not permissible or legal under copyright law, librarians can inform students of what they can do, and point to resources that explain the difference.

In the face of pressure to increasingly filter and monitor Internet traffic as an attempt, librarians can advocate for responses and policies that respect privacy, ensure unfettered access to information, and protect intellectual freedom.

Librarians are not alone in trying to ensure the policies implemented under HEOA are fair, equitable, and balanced. ALA and other library and higher education groups, including EDUCAUSE, will help inform, support, and monitor measures taken on campuses in response to HEOA. *JL*

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