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The Higher Education Technology Agenda

Copyright and compliance when the law can't keep up: Issues with innovation in online classrooms

Innovative methods for creating and sharing information on the internet pop up nearly constantly. These innovations are exciting for academics and course designers who seek to create new and inventive teaching materials and methods, but when it comes to using those new materials and methods, copyright law is a stumbling block in some cases and an insurmountable roadblock in others. Even when the types of materials created are those already imagined by the law—-text, images, sounds, video—-the uses of those materials are sometimes not. Copyright law in Australia divides uses into the discrete categories of reproduction and communication, but it can be hard to define what it means to copy and communicate materials on the internet. If you have a widget embedded in your website that displays images from a search engine, are you reproducing those images, even though you're not hosting them? Is providing a link to material communicating that material, even though none of the content is provided? Courts around the world are attempting to unpack the copyright quagmire that is the internet, but the process is slow and can't keep up with the desire of educators to flip their classrooms and to create original, ultramodern online learning environments.

Having black and white laws and myriad grey uses can create confusion and apprehension, can stifle creativity, and can also create major compliance risks. With the rigid nature of copyright laws in Australia, if the use is not explicitly covered by law, then the use is an infringement, and that in-or-out dichotomy tends to breed two extreme attitudes. Some educators refrain from experimenting with new uses because they are uncertain of how the law applies to them; they err on the side of caution. Some educators, however, proceed without regard for copyright, opening up the university and themselves to possible reputational and financial risk. The optimal approach is somewhere in the middle, and this balance can be achieved with a firm understanding both of copyright law and of one's university's risk culture. It's rare that uses can be both super-innovative and definitively compliant, but risk can be managed, and calculated decisions can be made.

In order to encourage the creation of original, ultramodern online learning environments, it's critical to understand the law as it stands and how to approach the law responsibly. This paper discusses current issues surrounding various kinds of innovative materials and uses, such as web-hosted videos and embeddable players; blogs and RSS feeds; and social media feeds and associated widgets, among others. It also discusses risk assessment methodologies and compliance strategies so that academics and course designers can make the most out of what the internet can offer while still having confidence in their legal footing.

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