

## **CHALLENGES OF COPYRIGHT LAWS FOR EDUCATION IN A FIJI UNIVERSITY**

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Globalization poses new questions regarding the relation between copyright law and education. In an Information Communication Technology (ICT) environment, a key issue is how education can best benefit from the educational resources available while still observing laws such as copyright. Changing trends and the digitalization of resources has added new challenges in the area of education, especially in the Pacific Island Countries. The use of Internet search, online database, and electronic resources has grown with the advancement of these technologies. This paper illustrates some of the challenges that exist in smaller nations such as Fiji, by reporting on some empirical research undertaken by the authors at Fiji National University.

### **Introduction**

COPYRIGHT REQUIRES an original work of authorship to be fixed in a tangible medium of expression from which it can be perceived either directly or with the aid of a machine or device. Copyright protects the form of expression only and does not extend to the idea or concept underlying the work. It includes the following: literary works, such as educational materials and computer programs; musical works, including any accompanying words; dramatic works, including any accompanying music; pictorial, graphic, and

sculptural works; motion pictures and other audiovisual works; sound recordings; architectural works; and more.

Facts cannot be copyrighted. However, the creative selection, coordination, and arrangement of information and materials forming a database or compilation may be protected by copyright. Note, however, that the copyright protection only extends to the creative aspect, not to the facts contained in the database or compilation (Klein and Hodge 2008).

A copyright is the exclusive rights to distribute, display, perform, or reproduce an original work in copies or to prepare derivative works based on the work. The copyright gives the owner of the copyright the exclusive right to distribute copies or phone records of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending; that is, to perform the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, motion pictures, and other audiovisual works.

A fair use of a copyrighted work may include the practice of any of the exclusive rights provided by copyright, for example, reproduction, for purposes such as critical comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research. These are the four factors that should be evaluated on a case-by-case basis in order to determine whether a specific use is fair use:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. The nature of the copyrighted work;
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect of the use upon the potential market for, or value of, the copyrighted work.

The distinction between fair use and infringement can be unclear and cannot be easily defined. There is no right number of words, lines, or notes that qualify as a fair use (Nair 2012). Indeed, it has been suggested that clarity on this issue is covertly weakened by the conservative nature of academics and policies that avoid confronting the copyright issue (Trosow 2010).

Work that might be copyright but is in the public domain may be used by anyone, anywhere, anytime without permission, license, or royalty payment. Public release, disclosure and dissemination describe the availability of a work. Publicly released, disclosed, or disseminated information may, however, be owned and protected by copyright and, therefore, not be in

the public domain. This may be particularly relevant in the context of education because of the prevalence and popularity of Internet searches by students.

The Internet is another form of publishing or disseminating information; therefore, copyright applies to Web sites, e-mail messages, Web-based music, and more. The fact that the Internet provides easy access to the information does not mean that the information is in the public domain or is available without limitations. Copyrighted works found on the Internet should be treated the same as copyrighted works found in other media.

If the publisher has made original and creative contributions to the published work, the publisher may have some rights posted on the public websites. The fair use principle applies to materials and use of works found or placed on the Internet. The same factors will be considered as for fair use in print. As in the print environment, it is not necessary for an author to include a copyright statement on the material in order for the work to maintain its copyright protection. However, notices may be found on the home page of a Web site or on special terms and conditions pages that provide for specific uses. It is a good practice to provide notice whenever possible, even though it is not required. In addition, there may be disclaimers and use notices that apply to use of the material. Many organizations encourage links by posting terms and conditions and “how-to” instructions on their Web sites, usually under the headings of Copyright, Legal Notices, or About Us.<sup>1</sup>

### **Literature: The Contemporary Context of Education**

The digitization of creative content poses a more serious challenge to copyright law than other technological advances to date. The challenge is that digital technologies continue to increase the ways in which individuals can consume and enjoy creative works, for example, by “ripping” music files from a compact disc (CD) to store on a computer or portable music device, despite the fact that copyright law does not explicitly permit those uses without the authorization of the copyright owner. At the same time, however, advances in digital technologies provide copyright owners with growing capacity to either restrict or charge for subsequent uses of their creative works.

Copyrighted works in digital form can be flawlessly and inexpensively reproduced and instantaneously distributed worldwide. Copyright holders consequently fear that unauthorized copying and redistribution of their works will cause their economic returns to decline.<sup>2</sup>

Copyright issues related to university research output in the form of theses and dissertations have been the subject of considerable discussion

among researchers and academics. Theses and dissertations have long been regarded as the basis of university research, as has the publication of scholarly works. Traditionally, authors create and produce intellectual outputs, which will be marketed or distributed by the publishers and which libraries will collect, preserve, organize, and disseminate. They arise from particular needs within a society, and their types and functions reflect the diversity within the society. This gives rise to the idea that libraries are institutions that assist their users in deriving and accessing information (Chidi 2012). Where these sources of information are digitalized or held as electronic copies there are concerns about copyright because digital documents can be easily downloaded and reused (Vijayakumar, Murthy, and Khan 2005).

In many Pacific Island countries, of which Fiji is an example, the development of library and information services in universities has not really been sufficiently resourced to deal with the rising student enrollment numbers. Consequently, academic and administrative staff of universities in the region are increasingly adopting strategies other than using the university library to obtain information. These strategies may involve getting the material directly from publishers, downloading or photocopying journals articles, opting for reprints, personal subscriptions to journals, and depending more on freeware databases. This leads to the situation where academic staff may rarely visit or access materials from the library. There is an increase dependence on lecture notes and handouts as well as photocopying of textbooks in Fiji and the Pacific region (Ouma and Sihanya 2009).

Although it has been suggested that undergraduate students need information to improve their social, economic, and political experiences and that this information is best retrieved from libraries, access to information outside of the library setting means that many of the advantages of library use are being lost. In particular, whereas previously staff and students may have familiarized themselves with their obligations under copyright law in libraries and consequently been able to respond to queries that relate to copyright issues, this is no longer necessarily the case. Although there may be copyright policies and procedures in place to meet legal obligations to prevent and rectify unlawful use of copyright material (for example, regulations regarding plagiarism by students) and that are directed at promoting a positive, ethical, and copyright compliant culture, as well as procedures established for the use of all works in the library's collection that will ensure copyright compliance, if staff and students are actually not using the library, further steps may need to be taken. For example, where there are computers, photocopiers, scanners, and printers for users to download, print, scan, or copy copyright material, copyright compliance should be encouraged by providing information on copyright by means of prominent notices at these locations (Moore 2010).

Although there is copy protection for software and the digitalization of content, there are also numerous override programs available for download or purchase by computer users. Indeed, many business end users have reacted so negatively against copy protection that software publishers have been forced to unprotect unsold software and to offer registered holders' unprotected copies in return for protected ones. As a result, software publishers are often frustrated in their efforts to commercialize intellectual property for the use of public domain, freeware, and shareware industry. The distribution of free software goes against the commercialization of intellectual property once it leaves the head of the creator, reverts immediately and by definition to the public domain. There is also the view that compensation of the author should be voluntary on the part of the end user. The sheer force of practice appears to be overwhelming the software field, so great is the number of public domain programs available via hundreds if not thousands of digital contents. If the current trends continue, this will lead to software not being purchased or licensed, in much the same way that original copies of books are not getting sold in the market because of illegal copies (Geist 2010).

### **Methodology**

This paper is written on the basis of the survey conducted at the Fiji National University among its students. Two hundred and fifty-one questionnaires were circulated to students at two main locations: Suva and Lautoka campus in Fiji. The questionnaire had four main components, which required the students to address their attitudes toward, first, general access to the Internet and downloading capacities; second, the information found on the Internet; third, the freely available digital information on the Internet; and, finally, the digital content on the Internet and how it is used when students pay for the content.

Out of 251 questionnaires collected, fifty-one questionnaires were discarded because they were incomplete. The remaining sample of 200 questionnaires was used to generalize the analysis for the use of digital content and the use of Information Communication Technology (ICT) facilities at the local university and to evaluate copyright use and infringements. The Statistical Package for Social Science (SPSS) was used to analyze the data.

### **Analysis and Discussion**

The full analysis is based on 200 questionnaires. The students who responded ranged from certificate, diploma, and bachelor level students from Suva

and Lautoka campuses. Forty-three percent of the students were first year or new to the tertiary education system. The remaining 57 percent were a combination of second and third year students. The responses to the questions asked are indicated below.

### *General Use of ICT on Campus*

The use of the Internet on campus either in the computer laboratories or via use of personal laptops of students revealed that 88 percent of students have access to the Internet, while 12 percent of the 200 said they did not have access to the Internet. The reason for the 12 percent without Internet access could be linked to fewer interactions in the computer labs—where Internet access is always available, or the use of personal laptops on campus without Internet connectivity.

The main use of ICT facilities and in particular the use of software or downloads from the Internet was predominantly done at home: 46 percent of respondents indicated that they preferred home for such activities. Another 9 percent did the same from business or the workplace, but 46 percent also used other places such as university library, campus computer laboratories, and Internet cafes.

The different type of software enquires made by the sample varied. The following were given as the types of software being accessed:

1. Business applications such as accounting packages, email systems, and office suites were downloaded by 42 percent of respondents.
2. Games and entertainment from the Internet for home and personal use were downloaded by 40 percent of respondents
3. Material for home studies and education, research, and assignments were downloaded by 30 percent of respondents.
4. Programs for personal use and productivity such as budget and money management, horoscope, chatting, calculation of tax, and other purposes accounted for 11 percent.
5. Finally, utilities such as downloading the antivirus, system utilities files, open source software, and others for a laptop or personal computer (PC), accounted for 58 percent of downloads.

The respondents had options to select more than one category of download, and most respondents indicated two or more options, so there is some overlap in these percentages.

While using the Internet, 17 percent of users stated that they were able to electronically purchase software that was license protected, 23 percent

opted for limited use of license, 37 percent went for the chats on the Internet, 16 percent for file downloading, and 26 percent depended on emails from others with downloads. Of all these methods of acquiring software, there were 29 percent or more respondents communicating with and getting the software from the distributors or retailers and application service providers rather than getting software from software publishers. Only 22 percent and 19 percent were actually buying online.

Thirty-seven percent of respondents indicated that within a time period of two years they downloaded between one and five downloads. Twenty-eight percent indicated that they only downloaded once or not at all in the same period, 20 percent indicated between five and twenty-five downloads, and 14 percent more than twenty-five. Asked to indicate how long ago prior to the questionnaire the acquisition of software was, 84 percent recorded this as being between the last ten days and a month, while 16 percent responded two years.

The primary use of the software declared by 78 percent was for personal use, 18 percent was for professional use, and 2 percent of use was for file swapping or trading. The other 2 percent did not specify their reasons. Thirty-seven percent of respondents used software for redistribution, while 63 percent did not redistribute software. The amount of redistribution among this 37 percent was one to five times for 53 percent of this group and once only for 28 percent, while more than five times accounted for 19 percent. Those who indicated that they did redistribute software indicated that they had mostly done this recently, within the previous ten days to the last month: 85 percent. Of this recent redistribution activity, this was mainly for copies of CDs and email copies: 53 percent of the group. Others purposes were significantly less, with approximately 8 percent each for chat, file downloads, using personal digital assistants, peer-to-peer transfers, or posting on Web sites.

### *ICT Use Evaluation*

All students at the university are given the freedom of use of ICT facilities available on campus and to students at home. The responses from students also indicated that the students proceeding from secondary to tertiary level, or already at university and progressing through their studies, exercised choices on how to use the Internet and what to download, and these choices were freely expressed. It was also apparent that the students preferred not to buy online but to evaluate their options of getting the software from distributors. The survey reveals that 14 percent of the students also

download quite extensively, with more than twenty-five downloads in the most recent period of the last ten days to last month.

The fact that 63 percent of the students indicated that they do not distribute downloads to which they have access suggests that students may be mindful of the use of downloaded material. The redistribution is significantly lower here.

### *Attitude of Copyright Effect on Students*

The analysis is shown in Table 1.

Asked to express their views on the application of copyright restrictions to material on the Internet, a number of different views were expressed by the sample. The suggestion that all the information provided on the Internet should be totally free was strongly supported by 55 percent of the students. The downloading of information from Web sites that are available only by subscription was strongly supported by 34 percent and somewhat agreed to by 36 percent of students. Fifty-three percent of the students strongly agreed with the proposal that they did not knowingly violate the copyright laws, and 52 percent strongly agree that information on the Internet should be copyrighted as the property of the author and sources.

Seventy-six percent of students strongly agreed or somewhat agreed that it is okay to share printed material such as that in magazines and newspapers even if the subscription is only paid by one person. Forty eight percent of students strongly agreed that they should never share downloaded software without proper licenses while 27 percent of the students strongly agreed that sharing of the above mentioned on the Internet would not hurt anyone. Thirty percent also agreed generally that they changed dates of their PCs for using software against the expiration of the software license. A large percentage (79 percent) also agreed or somewhat agreed that news-worthy articles should be free and freely accessible. Sharing information from the Internet with friends and family was supported by 59 percent.

There is some negativity about software being expensive, which was seen to justify sharing, and similarly that when software gets outdated it can be expensive to acquire new versions. This approach is supported by the fact that 75 percent of students preferred to just borrow the downloaded material for short term use. Another 55 percent thought that most subscribed sites online were not worth the cost.

That there should be stricter regulations to protect copyright was a proposal with which 77 percent of the students agreed generally. Approximately 55 percent thought that information should be sold just like any other



TABLE 1. Attitudes toward Copyright Expressed in Percentages.

	Strongly Agree	Somewhat Agree	Neither Agree/ Disagree	Somewhat Disagree	Strongly Disagree
Info free on Internet	55	26	6	8	5
Not violate copyright law	53	21	12	6	8
Ok to share downloaded info	34	36	11	8	11
Internet info should be copyrighted	52	25	11	5	7
Ok to share printed material	37	39	12	5	7
Never share downloaded software	48	25	13	7	7
Expensive software so share	44	28	13	6	9
Quickly out-dated software so share	31	35	14	9	11
Share software won't hurt anyone	27	22	20	17	14
Short term purpose, borrow software	42	33	12	6	7
Subscription based site: not worth it	29	26	23	13	9
Online and normal subscription is no different	24	37	18	9	12
Info not to be shared on Internet	30	22	22	11	15
Copied CD borrowed	24	30	15	15	16
Stricter regulation for Internet copyright	44	33	10	6	7
Changed date to use expired software	15	15	17	14	39
No fees for Internet of print material	43	36	8	6	7
Info should be sold like any other material	28	28	25	10	9
Internet users violate copy right laws at some time	43	26	12	7	12
Copy/share info off Internet is ok	23	31	21	9	16
Copyright should not be applied to anything on Internet	19	20	23	11	27

product online. Sixty-nine percent also agreed generally that there is always a violation of copyright laws at some point in time while online. Finally, there were 38 percent who generally disagreed that anything found on the Internet should be copyrighted.

*Free Digital Content*

Most of the students have free access to digital contents from home. Only 30 percent do not have access to free digital content. This free information is accessed, downloaded, and redistributed.

The primary recipients of this redistribution are mostly the friends and family of students. Only 15 percent is used for business and colleagues and the rest, 85 percent, is redistributed knowing where the software is being sent to. The type of information that is being shared here is in the form of Web site addresses, uniform resource locators, or links. The amount of copying of digitalized material ranged from 29 percent admitting that a small portion was copied; 30 percent acknowledging that they copied a substantial amount; and 34 percent of students admitting to posting entire documents to peer to peer.

*Paid Digital Contents*

Thirty percent of the students indicated that they use digital content for which they pay, having subscribed to the Web site, and that they are paying for the access. However, out of the total sample 54 percent still do not have paid digital content. For those with access to paid content, this was not accessed daily and but more usually once a week (38 percent) or infrequently (30 percent). Whether the digital content providers allows or does not allow redistribution is not clear among the students, since 66 percent responded “don’t know.”

The distribution pattern for paid digital content is very similar to the distribution of free content; hence students tend to redistribute more to friends and family, and in such cases may be sending full documents. There seems to be lower awareness of students toward copyright issues here because when they receive copies from others, recipient students opted not to subscribe or get their own copy themselves. This represented 30 percent of respondents. However, approximately 22 percent of the students are able to understand that licenses and terms and conditions can prioritize purchasing of copyrighted work effectively.

**Conclusion**

From the analysis done using the sample of undergraduate students from Fiji National University, 72 percent of the students agreed that they should not violate copyright laws. The responses indicated that the majority of the students are aware of the copyright terms and conditions. Nevertheless, this

study reveals that for reasons beyond their control, for example, the cost of most licensed software material, which is expensive for the average student, most students tend to infringe on copyright laws, mostly by using borrowed downloaded material.

Also the research shows that 77 percent of students from the undergraduate sample taken agreed that there should be stricter regulations to protect copyright material, which indicates that their level of awareness about the copyright laws is fairly high.

Despite a high awareness of copyright and a general support for copyright protection, the majority of these undergraduate students infringe copyright laws due to the high cost of original, licensed, learning resources plus the scarcity of these. It is therefore very important that university libraries play an important role in this matter to provide the students with the learning resources they need.

It is recommended that libraries can comply with the country's copyright laws and allow undergraduates to access learning resources. Libraries can set out the copyright guidelines that users, either staff or undergraduates, should comply with when they use the library resources through their Web sites. For example, you can access the Fiji National University library copyright terms and conditions through the Web site link.

Computers make it possible to reproduce protected copyrighted material digitally and transmit it to and from anywhere in the world using the common networks, very fast. The Digital Millennium Copyright Act provides specific laws in Australia to combat digital copyright infringements. However, in Fiji the law related to educational establishments and libraries on renting digital resources for educational purposes is governed by sections 73 and 74 of the Fiji Copyright Act of 1999.

It is also recommended that all this information should be disseminated to students when they enroll at university in order to avoid violations of copyright terms and conditions. The corporate and private sectors are very mindful of the way copyright laws are violated in Fiji. For example, the Web site of Vodafone Fiji<sup>3</sup> is used to communicate the terms and conditions to its customers, who have to register with the website.

## NOTES

1. For example, the local online newspaper link is <http://www.fijitimes.com>.
2. Copyright Issues in Digital Media: August 2004.
3. The Vodafone Fiji website link for the Terms and Conditions: <http://www.vodafone.com.fj/pages.cfm/general/terms-conditions.html>.

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