

## **Islands in the Stream: Academic Technology, Digital Copyright, and The Teach Act**

By Dr. Raymond Uzwyshyn

Puzzling over the arcana of the Teach Act, more than a few university administrators will be reminded of the minutiae of the tax code. To be sure, copyright law needs to be reconceptualized for the new millennia. Libraries and universities are witnessing a sea change from an earlier era of historical development. Definitions of copyright, technology, and the online classroom need to be recast or the laws become peripheral in handling new digital copyright questions that increasingly arise. Recent cases, present confusion, and various strong opposing debates regarding streaming media and the Teach Act illustrate these facts well. [For examples in the education media see Steve Kolowich's article, "Hitting Pause on Class Videos," Inside Higher Education, January 26, 2010 and \_\_\_\_\_, "Stream Away," Inside Higher Education, October 5, 2011.]

### **Going Digital in Academia: Copyright Then and Now**

How relevant is it that media industry content publishers offer movies on a DVD or streaming basis? How should this effect universities, academic libraries, and copyright regulation? In the past, Marshall McLuhan put this as "the media is the message." On a technological level, when an academic library purchases a DVD for borrowing, they purchase the artifact: a tangible, real object. When they stream from a publisher, they pay for access rights to a stream of bits. One doesn't own the stream but simply licenses access to data pipes. Historically, academic libraries have been in the business of storing, borrowing, and lending 'objects' with a myth of permanence as archives of knowledge. The digital stream though, presents a fundamental contradiction to a unitary model of archival permanence. The question arises: *Is academia still an island exempt from higher strictures of copyright, and how does this island relate to this ever-growing digital stream?*

This becomes a tricky matter for academic libraries especially in terms of digital media and e-reserves policies. Questions of copyright infringement and interpretation of the Teach Act Exemption 110 [Section 110: Limitations on Exclusive Rights: Exemption of Certain Performances and Displays. Cited from <http://www.copyright.gov/title17/92chap1.html#110>, Retrieved October, 28, 2011] have arisen. Faculty increasingly request production of copies of a DVD to stream through online courses. Now just because an academic library has the technological capability to make this type of copy, does this mean it should? If an academic library's policy is not to duplicate copy-protected DVDs, do they violate their policies and copyright law by streaming? It seems academic libraries are driven by best practices and the needs of their patrons. Historically, they are service-driven organizations. As the current needs of faculty are rapidly changing, academic libraries have made attempts to keep with their service orientation—though increasingly, this has come up against the complexity of copyright in the digital era.

Both Netflix and YouTube models currently have made incursions into brick and mortar and online classrooms. Will all academic institutions now pay for streaming rights? Faculty will do what they can to advance pedagogy. For online digital video modalities, the movement seems to be to pay video vendor database publishers such as *Alexander Street Press History Videos* for academic access rights. Does the TEACH Act allow a school to perform an entire movie on a digital network? This again is a multi-layered question with no facile answers. Recently, the regents of UCLA seemed to believe that the spirit of the Teach Act *does allow* a school to perform an entire movie on a digital network if the movie is circumscribed for a particular class and session and limited to that class as direct curricular activity. Through a court case, the film industry seemed to think otherwise. Will this difference become the upcoming educational Napster of the new millennia?

### **Academics as Digital Information Traffickers?**

Broadening this discussion, would the Teach Act apply if a faculty member wished to place an entire digital movie archive on an academic library e-reserves system? This does make library e-reserves into a well-stocked and interesting alternative to online video stores. Most academic library e-reserves systems are constructed so that the entire university community has access to the e-reserves content. Previously, few seemed to have issues with runs of *Proteomic Strand Analysis Journal of Cell Biology* being open to the university. Would there be brouhaha if universities place Spielberg's entire catalogue online for classes on "Spielberg and America: A Visual Semiotic Analysis"?

At certain academic institutions, there is a differentiation between DVDs that are copyright protected (DRM protected) and others that aren't. Perhaps this pragmatic 'deterrent'-type reasoning does rule the day, and there are parallels with the law. Most libraries aren't in the business of ripping anything off and actually see themselves in an opposite role. Increasingly, they are being asked to 'rip' DVDs for online curricular video streaming. In the recent UCLA vs. AIM case the legal metaphors that characterize UCLA libraries borrow from the language of illicit narcotics: "UCLA's exploitation of the Video Furnace system is trafficking in technology..." [Association for Information Media and Equipment et al. v. The Regents of the University of California et al., No. CV 10-9378 CBM (MANx). (C.D. CA 2011). AIME v. UCLA – Doc. 19: UCLA Case Amended Complaint. AIME v. UCLA--Doc. 34: Order Granting Defendant's Motion to Dismiss. AIME v. UCLA -- Doc. 38: Second Amended Complaint.] Most administrators or faculty would never think of UCLA's mild-mannered librarians as academic digital pushers but perhaps that's what it's come down to for the perceived marketplace threat of current players. Pay for copyright protection or the online academic gigs up! Definitely something most university administrators would have never associated with academic libraries or librarians—generally a law-abiding service-oriented lot. Instead of stewards of the archives of knowledge, the shift here is towards 'information trafficking' in the twenty-first century. Who would have thought?

An information explosion is definitely occurring through media. A paradigm shift through the network forces us to reconceptualize copyright but also academia. The ways we have to think about this larger shift have yet to be developed. Society seems to be in the midst of an era not unlike the first fifty years after Gutenberg. A profusion of digital activity is shaking foundations of well-established structures. There is a realization that older socio-economic systems are ill-equipped to deal with these new realities. There is also understanding that the old system is the only system currently present. It would do well to remember McLuhan again, "New technologies all but wreck the societies and associated systems in which they appear."

### **Time to Reexamine**

In large part, academic libraries have always been and will continue to be havens for protecting and providing archives of knowledge and wide access to information. If it is now information trafficking for universities to proceed along these lines perhaps it time for a wider reexamination of fundamental digital copyright assumptions. In terms of networked data, artifacts over the Internet are streams of bits: software, e-book, image, and streamed digital video. In the twenty-first century, where does the bit end and copyright artifact begin? How can the law pragmatically insert itself to protect various interests balancing the market functions of democratic society with the traditional roles of academic libraries and universities?

To look forward, it will increasingly become more difficult to differentiate definitions between textbooks, videos, and software, especially in online learning. 'Streamed' textbooks are quickly becoming interactive, incorporating and intermingling a spectrum of media, images, text, data, and software. Interactive multimedia will become the preferred 'textbook' for all disciplines. Humans are naturally multimodal and learn through a spectrum of media. The stewards of copyright code need to start planning and gestating better thinking and more innovative paradigms to deal with some of these challenges but also recognize the opportunities to reconceptualize nineteenth-century law for the twenty-first century and various current interests involved.

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