

**PROMOTION OF DISTANCE EDUCATION  
THROUGH DIGITAL TECHNOLOGIES  
UNIVERSITY OF MARYLAND UNIVERSITY COLLEGE  
WRITTEN SUBMISSION  
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to the COPYRIGHT OFFICE, LIBRARY OF CONGRESS**

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**EXECUTIVE SUMMARY**

**UNIVERSITY OF MARYLAND UNIVERSITY COLLEGE**

University of Maryland University College (UMUC) is one of the world's preeminent universities providing educational opportunities for the workforce. UMUC offers a wide range of high-quality, fully accredited educational programs at the undergraduate and graduate levels and provides many non-credit offerings for the busy adult. Renowned worldwide for its highly advanced Virtual University, UMUC offers students the opportunity to take courses and earn degrees from anywhere at any time. At present, more than 6,200 UMUC students are enrolled in 150 online courses and are able to fulfill all of the requirements for seven different degrees online. UMUC also offers traditional classroom-based courses at more than 30 regional sites across Maryland and in the national capital area. For nearly 50 years, UMUC has provided educational opportunities to United States armed services personnel in Europe and Asia under a contract with the Department of Defense. In 1998, UMUC received a UCEA/Peterson's award for innovative distance education.

- UMUC believes that there must be a broad exemption for the use of copyrighted works in digital distance education in the Digital Millennium Copyright Act (DMCA). Because the needs of educational institutions and libraries are not always compatible with the desire of the copyright holders, the continued use of a balanced approach, employing the fair use provisions of current copyright law and broadly disseminated voluntary fair use guidelines, has far more promise than new digital-specific guidelines that may be too restrictive. In addition, the exemption in Section 110 of the 1976 Copyright Act must be extended to apply to digital distance delivery. Requiring license agreements for each use of copyrighted material may protect the rights of copyright holders; however, they are often so restrictive that they prevent non-profit, public higher education institutions from delivering distance education in a broad sense, and specifically from making a copy of a work that they should be able to under the fair use doctrine. Such licenses are often prohibitively costly.

Trying to legislate specific exemptions -- as opposed to a broad one -- also would make the new DMCA legislation obsolete in a relatively short time period. Therefore, the existing fair use doctrine and guidelines, as well as the principle of the Section 110 exemption, which have served the country well to this point, are applicable and useful for copyright protection in digital distance education. For a public, non-profit institution like UMUC, the combined approach of fair use and an expanded Section 110 makes it possible to deliver course content and electronic reserves at a distance. Any other approach will almost certainly make it prohibitively expensive to use copyrighted material in distance education.

Guidelines and legislation that are too restrictive would have a chilling effect on the use of copyrighted works for educational purposes. This would, in turn, limit educational opportunities for significant numbers of adult learners, thereby diminishing the ability of a university to educate the workforce. For example, Section 404 of the DMCA permits libraries to make a digital copy of a work but does not permit them to provide access to that copy except within the confines of a library building. Because students taking courses through digital distance education can rarely get to a physical library building (which would in any event defeat a large part of the utility of digital distance education), institutions like UMUC need an exemption to permit them to make a single digital copy of copyrighted works for use by students in a course. The Copyright Office should provide an exemption for libraries serving students studying at a distance to ensure the quality and availability of library resources to the same extent that they are currently available to students who study on a traditional campus.

- Access to course materials must, naturally, be guarded by institutions seeking fair use. At UMUC, course materials are made available in electronic form from the institution or from a provider the institution enlists, and they are accessible only by students who register for the course and who are assigned a password and PIN. Faculty access is similarly secure, and faculty are continually trained regarding the fair use provisions of copyright law.

In creating a course for delivery in digital form, UMUC reviews the proposed course content, identifies any copyrighted material there in and conscientiously seeks the necessary permission from the copyright owners. When permission cannot be obtained, the material is not used. The delivery of the information traditionally associated with libraries has also become an integral part of the delivery of course content through digital technologies. Librarians try to make as much information available online as possible, so that students and teachers in non-traditional environments have the same access to information as students and faculty in traditional classrooms.

- UMUC works closely with the Copyright Clearance Center (CCC) to obtain the necessary licenses and permissions to use digital information in an effort to comply with current copyright law. However, this process is fraught with problems. It is difficult, time consuming and at times almost impossible to determine the owner of a copyright. Some owners refuse to cooperate with CCC or may refuse to have their work reproduced in digital form. It is not unusual for costs charged to use material in a digital environment to be much higher than the costs for making a paper copy. Additionally, permission is often granted for only one semester, and the whole process must be repeated if the faculty member wants to use the material when the course is repeated in subsequent semesters.

It is important to note that materials disseminated in digital form through electronic reserves are more secure than materials distributed as paper copies through reserves in a traditional library building. The use of electronic reserves is restricted exclusively for the students and faculty in a specific course. Copyright owners' rights are actually better protected in the electronic environment than they have been in the paper environment.

The CCC is the closest thing there is to a one-stop shop available for obtaining copyright permission for copyrighted works. However, there is a need for the Copyright Office to take a

proactive stance and provide this service, as well as to educate copyright owners on the security provided in digital environments. The need for a single location is acute. There is also a need for a requirement that copyright owners be required to register their copyright with the Copyright Office to allow access to the work in digital environments, and to allow their works to be used for a reasonable fee.

Lastly, it should be noted that copyright holders frequently require public, non-profit institutions of higher education to pay additional fees to deliver information to international audiences. The concept of a physical campus is outmoded in the realm of digital distance education, and it can no longer be used to determine pricing for digital information. It is simply impossible to determine when a student studying through digital technologies is in the United States.

- In closing, it is important to emphasize that students participating in distance learning programs should have the same access to information that traditional students have. This access should not be limited by lengthy and costly procedures or by restrictive laws and regulations.

In the future, digital distance education will be the primary education delivery method. It will serve students traditionally denied access to higher education opportunities (such as working mothers), and will strengthen the industrial and military workforces. The standard for distance education that serves such significant numbers and groups must be equal to that in the traditional classroom.

## **PROMOTION OF DISTANCE EDUCATION THROUGH DIGITAL TECHNOLOGIES**

### **UNIVERSITY OF MARYLAND UNIVERSITY COLLEGE**

University of Maryland University College (UMUC) is one of thirteen institutions that make up the University System of Maryland. UMUC is one of the world's preeminent universities providing educational opportunities for working adults, and offers a wide range of high-quality, fully accredited educational programs at the undergraduate and graduate levels and provides many non-credit offerings for the busy adult. Renowned worldwide for its highly advanced Virtual University, UMUC provides its students the opportunity to take courses and earn degrees from anywhere at any time. At present, more than 6,200 UMUC students are enrolled in 150 online courses and are able to fulfill all of the requirements for seven different degrees online. UMUC also offers traditional classroom-based courses at more than 30 regional sites across Maryland and in the national capital area, and, for nearly 50 years, UMUC has provided educational opportunities to United States armed services personnel in Europe and Asia under a contract with the Department of Defense. In 1998, UMUC received a UCEA/Peterson's award for innovative distance education.

#### **I. WHAT IS THE NATURE OF DISTANCE EDUCATION?**

Distance learning occurs free of place and, often, time constraints. In distance education, students learn, but not necessarily by attending classes in particular buildings at particular times. There are currently two main forms of distance education: synchronous distance education, in which students may participate from a variety of places, but at the same time; and asynchronous distance education, which frees students from both place and time constraints. Examples of synchronous distance education are televised courses, whether delivered over broadcast, cable or satellite television. Examples of asynchronous distance education are courses delivered over the World Wide Web, which students may log on to from their homes at times that convenient for them.

Distance education differs from traditional classroom based education in being "learner-centered."

Materials and methods of delivery are maximized so that students learn independently under guidance from faculty. Materials are highly structured, and courses rely much less on traditional lecture delivery, while significantly increasing the use of activities and tasks that lead the learner toward specific learning objectives.

Currently, distance education delivery via the Internet and the Web is heavily dependent upon digital technologies. This dependence will only increase over time, as the use of digital video becomes more widespread and integrated into online presentation. Many distance education programs are currently transitioning technologies and seeking to achieve a balance in how they deliver distance education. For example, some programs are moving courses and programs to the Web that had previously been offered only in video environments. These transitions are almost always in the direction of digital (and away from older, less efficient and less universal) technologies.

There are major differences between "web-based" distance education courses and "classroom enhanced" courses that may use the web peripherally. In the former courses, the intent is that students learn entirely at a distance, primarily through the digital (web) interface. This means that all lessons, interaction, activities, and learning resources must be accessible via the digital interface. The student must be able to use the interface, often without "hands-on" instruction in its use, and everything that the student needs - including faculty support - must be accessed via the interface. In classroom-based education this is simply not the case. Classroom delivery relies more on face-to-face interaction and less on a digital interface. There is no "learning transcript" in the classroom - the teacher often IS the transcript - and, thus far, there is no general expectation that all of the needed resources be available online - although some may be.

Distance education courses in higher education are self-contained learning environments where students engage in all of the forms of learning alluded to in this question: they use the Internet as resource as well as main delivery vehicle; they communicate via e-mail with teachers and classmates; they communicate in chat rooms, in threaded conferences or in teleconferences.

Most asynchronous distance programs, however, do not rely heavily on learning via modes that are time-dependent, for example, chat rooms, or modes that are not efficient from a class management and communication standpoint, for example e-mail. The best courses and programs find ways to make learning interactive so that students may react to materials and work in study groups to understand them and to produce their own products jointly (imitating today's work environment.) Copies of entire courses are generally kept online (archived) by institutions. The practices for doing this and extent to which this is done vary considerably from institution to institution. No national analysis or study has yet been done in this area. However, there is a genuine need to retain the right to make digital copies of courses, parts of courses, and copyrighted articles for preservation and archival purposes. Course materials are made available in electronic form either from the institution or from the provider that the institution enlists. In traditional institutions the provider is often a faculty member. At UMUC course materials are accessible only by students who register for the course and access is limited by comparing the user IDs and passwords/pin numbers of the students each time they log on to the course.

In higher education, distance education programs often fall under Offices of Continuing Education and/or Outreach, the entities traditionally charged with reaching non-traditional learner. At some institutions, such as UMUC, where non-traditional learners are the norm, distance education is overseen by small offices, but the mission for delivering courses falls within all academic departments. Funding at many institutions is "cost-center-based," meaning that the office sponsoring the courses - such as a Continuing Education branch - must be self-supporting. At UMUC, the funding for distance courses is part of the overall institutional budget, and distance education development and delivery is a high priority. Like other public universities, UMUC revenues come from two main sources, tuition and a contribution by the state. In addition, UMUC also realizes funding from government contracts. At UMUC, there are no additional fees for students enrolled in online distance courses.

In distance education programs, one indispensable element of course content is the development and

delivery of electronic reserves (i.e., the delivery of supplemental course material, primarily reading material such as journal articles, chapters from books, and technical reports, in digital form). In conjunction with the library, faculty determine what materials are needed to enrich the delivery of the course and consult with the library staff to convert paper resources to digital form or deliver portions of various analog and digital media, such as motion pictures, music, sound recordings, or computer programs, as part of the course delivery. The materials are used for a short period of time, one or two semesters, and the types of materials often change rapidly to keep the course materials up-to-date. Before the availability of electronic reserves, reserve readings were mailed in paper format to students. However, online courses can incorporate other types of media such as motion picture clips, which cannot be mailed to students. Further, it was sometimes difficult to get mail to students in distant locations, such as Bosnia, but these students now are likely to have access to the World Wide Web and, as a result, are able to use materials if they are delivered online.

## **II. ROLE OF LICENSING**

### **Course Materials**

In the process of creating a course for delivery in digital form, UMUC assigns an editor to the course. One of the editor's functions is to review the proposed course content and ferret out any content that is, or may be, from a copyrighted work. UMUC editors are trained to understand the copyright requirements and have the ability to identify copyrighted works. In any instance where the editor thinks copyright permission is needed, the editor forwards the material to the individual at UMUC who is responsible for obtaining permissions. The individual who has responsibility for obtaining permission works with the copyright owners to obtain the necessary permissions before the item is included in the final course. In instances where the copyright owner refuses to allow their work to be included in the course, UMUC alters the course content and has to find alternative materials. In addition to these precautions, UMUC also trains faculty in copyright law and fair use through faculty workshops offered each semester.

UMUC uses both negotiated licenses and form contracts. UMUC is willing to enter into either a license agreement or contract depending on the desire of the copyright owner.

### **Electronic Reserves**

The delivery of the information traditionally associated with libraries has become an integral part of the delivery of course content through digital technologies. Access to resources traditionally found in the library such as journal articles, book materials, technical reports, videotapes, motion pictures, and conference proceedings play a crucial role in making the digital classroom environment equivalent to the in-classroom experience. Librarians are working feverishly to make as much information available online as possible so that students studying through non-traditional formats, and faculty teaching in non-traditional environments, have the same access to these various media as those students and faculty who are in the traditional classroom. When pre-existing content is used, UMUC has conscientiously sought permission to use these materials for e-reserves.

### **The Difficulties of Obtaining Licenses and Permission To Use Digital Information**

UMUC works closely with the Copyright Clearance Center (CCC) to obtain the necessary licenses and permissions to use digital information in an effort to comply with current copyright law. The CCC is the only organization at this time that will seek permission on behalf of an institution for the delivery of course materials through e-reserves. Unfortunately, it takes at least a month, typically much longer, to obtain permission. For academic institutions, the semester may only be three months in length, and in many cases it is a shorter period of time. The length of time it takes to get permission is a barrier to delivering the content in digital form as part of a course.

Obtaining permission to deliver e-reserves in conjunction with distance education is fraught with

difficulties. UMUC has encountered numerous problems:

1. It is often nearly impossible to determine who owns the copyright for a work that is needed for course reserves. It is time consuming to determine who owns a work and this can make it impossible to offer a work or parts of a work for e-reserves because a single semester is not enough time to identify the copyright holder. Even though information in an electronic environment may not contain information about the copyright holder, it is still necessary to obtain permission to use the document. The types of resources needed from the library to enhance the delivery of a course changes rapidly. It is not uncommon for faculty to change the course readings or types of media they want to use each semester. The lengthy time needed to identify the copyright holder -- and then to obtain permissions -- presents a significant barrier to delivering e-reserves that are the most up-to-date and relevant.
2. Copyright owners, typically the publishers, often refuse to work with the CCC and require UMUC to go directly to the publisher for permission to reproduce a work in digital form for reserves. In these cases, UMUC must approach the publisher directly after having already waited a month or more to hear from the CCC. Typically, UMUC must request copyright permission, which again is time consuming. Occasionally, UMUC is unable to use a work that is pivotal to the delivery of a course, and has to choose another item that is not as relevant as the original work chosen by the faculty member. This can occur especially with video-based materials when the rights for such materials have been sold by the owner to larger media conglomerates who may in turn refuse to license them or allow fair use.
3. Another severe problem is that the costs charged to UMUC to use information in the digital environment are much higher than the costs for making a paper copy. It is not unusual for the cost of using a single article for a course to be in excess of \$3,000. For example, to place one article on electronic reserves from the Washington Post cost \$1,200. The publisher charges a royalty fee and an additional fee of \$46.00 per student in the course. Additionally, the permission is only for one semester and, as a result, UMUC must pay the same amount, for one copy of one article, each semester. Previously, if UMUC sought permission to make a copy of the same article in print, the publisher charged \$50.00 total, a difference in cost of \$1,150 and an increase in excess of 2000% over the cost of making one copy of the paper. The costs of obtaining permission are so high that it is becoming cost prohibitive for a non-profit educational institution to continue providing a reserve copy for students in a course. UMUC has had to ask faculty not to use certain articles because the costs were prohibitive. If universities are to provide equivalent access to information for students studying through non-traditional formats, and ensure the course materials are of the highest quality, they must be allowed to use these resources without having to pay excessive fees.
4. In some instances, the owner of a copyright refuses to allow their work to be reproduced in digital form. Regardless of the purpose of use (e.g., to educate students in non-profit, public institutions), there are several publishers -- the Harvard Business School being one notable example -- that refuse to allow any of their works to be made available in digitally delivered distance education courses. As a result, UMUC cannot arrange to deliver these materials because the publishers simply refuse to allow their works to be digitized and delivered online.

The information publishers own is often critical to the development and delivery of a course and their policies deprive distance education students of resources that are available to students who take courses on a traditional campus. The owners of copyright must be required to establish reasonable fees for the use of their materials. Outright refusal to allow their works to be made available in digital format could cause the debate and discussion necessary to the creation of new works to be severely restricted.

5. When copyright permission is granted to use a copyrighted work, it is only for one semester. UMUC's library must continually request permission, each semester, when the faculty member wants to use something more than once. This extremely time consuming.

## **Security**

As previously mentioned, responsible distance education providers put in place secure, automated means of protection for materials used in distance courses. These methods deny access to all but registered students and authorized faculty. It is important to note that the dissemination of materials in digital form through electronic reserves is more secure than the current distribution of paper copies of materials through course reserves in the traditional library building. In a traditional library, for example a public, non-profit, academic library, anyone can use the materials and make copies of the resources on course reserve. In the digital environment, electronic reserves is restricted exclusively to the students and faculty in a specific course. Access to the materials is protected by passwords and no one can view or download the information unless they first pass through several security measures. Therefore, copyright owners rights are better protected in the electronic environment than they have been in the paper environment. In many ways, technology has made it easier for librarians to protect the rights of copyright owners and electronic reserves do not pose a threat to the rights of copyright owners. The distribution of materials in digital form is actually more secure than when the materials were available in the library building.

## **Technological Solutions to Problems**

Technology provides a number of different capabilities that make it possible to identify the rights holders or ameliorate the difficulties of licensing. However, at the current time, there are no examples of commonly accepted methods for using technology for this purpose.

Currently, the Copyright Clearance Center (CCC) is the only one-stop-shop available for obtaining copyright permission for copyrighted works. Unfortunately, their efforts are hampered by the copyright owners who frequently refuse to allow CCC to extend permission to use a copyrighted work. As a result, their ability to act as a one-stop-shop is limited. It will likely take a long time before such one-stop-shops develop and publishers would have to be required to work with them if they are to be effective. To date, there does not appear to be sufficient incentive to develop a one-stop-shop and publishers reluctance to work with the one that exists currently limits its effectiveness.

There is a need for the Copyright Office to take a proactive stance and provide this service. The need to have one location for obtaining permissions is acute. Further, the Copyright Office should require that copyright owners register their copyright with the Copyright Office so that the difficulty currently in identifying the copyright owner is lessened. Further, for educational purposes, copyright owners should be

required to allow their works to be used for a reasonable fee. At the current time, many works are unavailable or the fees for using them are so high that it is not possible to use them for educational purposes and the development of new knowledge. In addition, it would be helpful if the length of time given for permissions were longer. One semester is too short a period of time. Granting permissions for a longer period, one academic year, for example, would be much more reasonable and for educational purposes, it would make it possible to spend less time obtaining permissions repeatedly.

## **III. APPLICATION OF COPYRIGHT LAW TO DISTANCE EDUCATION**

There must be a broad exemption for the use of copyrighted works in digital distance education in the Digital Millennium Copyright Act (DMCA). Currently, the 1976 Copyright Act provides an exemption for the performance or display of a copyrighted work if it is for the purpose of instruction. The current exemption needs to be retained in the DMCA. Congress enacted Section 110 in 1976 not because licensing of information was difficult, but because it made a policy judgement that, on balance, educators should not have to spend time and money getting advance clearance to use certain copyrighted materials in particular ways. In writing the exemption, Congress examined the nature of distance education practice and technology, and provided relief from those rights of owners implicated by video delivery. As technology evolves, course content will become increasingly available through digital technologies.

However, the purpose for the use of the copyrighted works remains the same as it was in 1976 -- for non-profit, instructional purposes only. Further, the exemption is essential because it assures that students studying at a distance have the same access to copyrighted materials necessary for their course work as those studying at a traditional institution.

Some would argue that the existing "fair use guidelines" are sufficient for educational purposes. Unfortunately, the "fair use guidelines" cannot substitute for the current exemption -- their applicability to digital distance education is untested and unclear, and instructors are fearful of violating copyright laws to the extent that they often forego using essential materials for fear of reprisal. The current exemption has made it possible to provide access to adult student populations. If the exemption is not continued in the DMCA, the educational opportunities of distant students will be significantly reduced.

It is inevitable that the technologies used for the delivery of distance education will become more reliant on digital technologies. Educational institutions are finding better ways of controlling access to the course material and, as a result, are protecting access to the copyrighted works being used for instructional purposes more successfully than ever before. It is highly unlikely that piracy will increase as digital copies of works are used by educational institutions. To date, this has not occurred. Further, educational institutions are committed to ensuring that access is restricted to those who have a lawful right to use the material. In providing an exemption only for the owner's right to control display and performance, the exemption does not allow for the distribution of material or its necessary temporary reproduction in RAM memory -- two rights of owners that must be covered by the exemption allows for video distribution only between classrooms and not over phone lines and modems to individual students. The current exemption does not extend to the kind of critical multimedia at the core of distance education curricular material.

Ideally, copyright holders and educational institutions should work together to create guidelines that both sectors agree are fair and are willing to abide by. To date, however, current available guidelines such as those contained in the "fair use guidelines" for Educational Multimedia, are not accepted by both sectors. In the view of the non-profit, public institutions of higher education, the guidelines are too restrictive and have a "chilling effect" on the use of copyrighted works for educational purposes. The needs of educational institutions and libraries are not always compatible with the desire of the copyright holders. Therefore, ensuring the continued use of a balanced approach, such as the "fair use guidelines," has more promise than guidelines that are not always compatible among educational institutions, libraries, and the desires of the copyright holders. Therefore, ensuring the continued use of a balanced approach, such as the "fair use guidelines," has more promise than guidelines that are too restrictive.

One difficulty raised by the DMCA occurs is Section 404 of the Act. Section 404 permits libraries to make a digital copy of a work, but does not permit them to provide access to that copy except within the confines of the library building. UMUC, for example, maintains a digital library and does not have a traditional library building. Therefore, the exemption does not take into account this type of situation and the needs of students studying through digital technologies. Further, students taking courses through digital distance education can rarely get to a physical library building and, if they can, there is no guarantee that library will contain the research materials they need to complete their course work. Instead, it is the responsibility of the UMUC library to see that students and faculty have access to the information they need. Therefore, UMUC's library, and other libraries that serve remote students, need an exemption which permits them to make a single digital copy for use by an individual or students in a course. If proper precautions are taken to ensure the work is not used beyond the needs of a student or a course, then it should be permitted. Otherwise, it is extremely costly to have to pay to provide access to information that students studying on a traditional campus can use for free.

In the future, costs may become prohibitive, and identifying the copyright owner too laborious. In view of these obstacles, libraries may have to limit information provided to distant students. This sets up an inequitable situation. The new restriction on the libraries -- that a copy of a work may only be used in the physical library building -- does not translate well to the digital library environment. There is the distinct possibility that this amendment will hamper the delivery of library resources to students

studying through digital technologies, and ultimately lower the quality of a course delivered in the digital environment. Therefore, the copyright Office should provide an exemption for libraries serving students studying at a distance to ensure the quality and availability of library resources to the same extent that they are currently available to students who study on a traditional campus.

#### **IV. IS THERE A NEED FOR A NEW OR FOR AN AMENDED EXEMPTION FOR DISTANCE EDUCATION?**

The use of technological measures to protect against the unauthorized access to, and use or retention of, copyrighted materials is standard practice at UMUC. UMUC is able to restrict which students view which documents and through the use of a password system, and to restrict who has access to UMUC's resources from off-campus sites. UMUC considers it essential to control access to copyrighted materials, and the current technology makes it possible to do so.

On the other hand, the use of technology to protect information offers some problems. For educational institutions, in many instances, publishers put up barriers to protect their information that make it impossible for some students and faculty, who have a legitimate right to access the information, to get access to the information. Fire walls, for example, frequently deny students access to information at certain publisher Web sites. If technological measures are to be used, it is imperative that they are not so restrictive that they interfere with the delivery of digital distance education. At the current time, the technology measures to protect information are in some cases so restrictive that they prevent legitimate users from accessing the information. This is a pitfall that it is important to avoid.

Because the availability of licenses has resulted in further restrictions in the use of copyrighted information and an erosion in the intent and spirit of the "fair use guidelines," the availability of licenses should not be used as a measure for assessing eligibility. By their very nature, licenses are further restrictions, barriers to using information, regardless if the use of the information is for non-profit, educational purposes. License agreements protect the rights of copyright holders. However, they are so restrictive that they prevent non-profit, public higher education institutions from making a copy of a work that they should be able to under the "fair use guidelines." Therefore, the availability of licenses is not a good measure for determining who should be eligible for an exemption.

One integral part of the delivery of a course is the use of electronic reserves to supplement the traditional textbook and enrich the learning experience. Libraries have traditionally had the ability to provide one copy of a work, at the request of a faculty member, under the "fair use guidelines," for reserves without obtaining permission. In the digital age, providing reserve materials continues to be an integral part of the course delivery. However, providing a digital copy is now extremely expensive, time-consuming, and difficult. The main problem is that, unlike traditional paper resources, libraries are rarely able to purchase journals outright in digital form. Instead, publishers now prefer to lease journal literature, through databases, to libraries. The majority of online journals and other resources in digital form cannot be purchased by libraries because the publishers do not permit it. As a result, in almost all instances, librarians now lease digital information, and the publishers of this information consistently require the purchasing library to sign a license agreement. The license agreement typically prohibits the purchasing library from making copies of the digital information in any form. At the same time, libraries cannot afford to retain a copy of a journal in both paper and digital form. Therefore, libraries are canceling the journals they own in paper form in favor of the digital copies that they do not own.

Librarians prefer the digital copy of a work because they know that it is preferred by most of their users. As a result, the "fair use" exemption for libraries as outlined by Congress in Section 108 of the Copyright Act is rapidly eroding. The congressional exemption was designed to permit libraries to make one copy of a copyrighted work upon request of a library user for works the library owned as part of its collection. With the new restrictions, publishers are placing on digital information, librarians are no longer able to disseminate information as they have in the past.

Librarians should not lose their exemption just because information is in digital form. Instead, the

exemption for libraries should remain inviolate and to do so, rules will have to be adopted that make it possible for librarians to make a copy of a work that the library has obtained legally, at the request of a library user. Librarians cannot avoid signing license agreements for information they purchase. However, if the exemption for libraries is to remain intact, it is essential that the exemption extend to the information librarians have leased or purchased on behalf of their patrons. Librarians must have the ability to make a single copy without having to seek permission in every instance. Otherwise, the ability of librarians to create archives or disseminate information on behalf of their patrons will be severely restricted and may be lost entirely in the digital age.

## **V. INTERNATIONAL CONSIDERATIONS**

Copyright holders frequently require that public, non-profit institutions of higher education pay additional fees to deliver information to international audiences. With digital distance education, the concept of the campus, or the assumption that students are within the borders of the United States, is outmoded and can no longer be used to determine pricing for digital information. In the case of LEXIS/NEXIS, for example, additional fees are charged for international students. Unfortunately, it is impossible to determine when a student studying through digital technologies is within the United States or temporarily outside her borders. Therefore, obtaining permissions for copyrighted works should not be based on artificial borders that are obsolete in the digital age.

Furthermore, institutions often pay for access to digital databases based on full-time equivalency, which means that every student, regardless of their physical location, is included in the price a public, non-profit institution pays for access to copyrighted information. Therefore, it is unreasonable to charge again based on the students' location. The additional charges make it extremely costly for a university to deliver information to students wherever they are located around the globe.

With regard to e-reserves, UMUC's policy has been to request copyright permission, through the Copyright Clearance Center (CCC), for all materials that needed for use in digital form or intended to convert to digital form to use for electronic reserves. The library takes responsibility for obtaining copyright permission because this is easier for the faculty, it is possible to ensure copyright permissions are obtained, and it is also possible to keep detailed records on the materials being used.

Access to resources traditionally found in libraries play a crucial role in making the digital classroom environment equivalent to the in-classroom experience. Librarians are working feverishly to make as much information available online as possible so that students studying through non-traditional formats, and faculty teaching in non-traditional environments, have the same access to these various media as those students and faculty who are in the traditional classroom. When pre-existing content is used, UMUC has conscientiously sought permission to use these materials for e-reserves.

The UMUC Office of Faculty Development, in conjunction with Information and Library Services, offers a workshop each semester on the basics of copyright. The course includes a review of current copyright law, a discussion of the "fair use doctrine" and introduces participants to the current guidelines available concerning copyright and electronic media (e.g., the Fair Use Guidelines for Educational Multimedia). The course reviews current court decisions on copyright infringement that concern faculty and higher education institutions. The workshop also includes case studies of potential copyright issues that may arise for faculty using digital technologies in the delivery of their courses. An attorney with expertise in copyright issues provides guidance in how to follow copyright guidelines in the dissemination of digital information in conjunction with course delivery. Higher education institutions that are at the forefront of delivering courses at a distance, such as UMUC, are committed to making sure their faculty understand the rights of all parties and the limitations placed on these rights when courses are delivered entirely in digital form.

## **VI. CONCLUSION**

In closing, it is important to emphasize that students participating in distance learning programs should

have the same access to information that traditional students have. This access should not be limited by lengthy and costly procedures or by restrictive laws and regulations.

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