



Creation and Use of Intellectual Works in the Academic Environment: Students' Knowledge About Copyright and Copyleft



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ARTICLE INFO

Article history:

Received 26 February 2015

Accepted 1 May 2015

Available online 21 May 2015

Keywords:

Copyright

Copyleft

College students

Information literacy

Spain

ABSTRACT

Copyright legislation directly affects the habitual work of university students, who are both users and creators of copyrighted works. The development of the digital setting has complicated this relationship substantially, as it multiplies the possibilities of creating, modifying and sharing works, while also multiplying the infractions of copyright. Moreover, two opposing phenomena are seen: on the one hand, a staunch reinforcement of copyright legislation, and at the same time a movement toward aperture and flexibility whose best example would be the Creative Commons licenses. In this context, it is crucial for students to have some minimal knowledge that will allow them to adequately deal with problems or questions arising as they use or create intellectual works. This study presents the results of a survey of Spanish university students, with the aim of determining their level of knowledge about copyright and copyleft, particularly applied to academic activities. The results make manifest a level of knowledge far below the one required to make proper use of the copyrighted works of other parties, or to appropriately protect and diffuse one's own intellectual creations deriving from activity as a university student.

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INTRODUCTION

Copyright legislation has a direct impact on the activities undertaken in the academic realm—teaching, learning, research—because it implies the constant use of copyrighted works. In the analogical world we had achieved a reasonable balance between the interests of all the stakeholders. However, the digital setting tipped the scales radically. For one, because the development of digital information and networks has facilitated infraction, we have witnessed a significant modification of legislation to adapt it to the new technological reality, resulting in a staunch reinforcement of protection. At the same time, the members of the university community, teachers and students alike, have taken advantage of new possibilities to use and modify digital works more freely, on occasion going beyond what is permitted by law.

Though it is true that the development of the digital setting presents a greater risk of infraction of copyright, legal reforms carried out in recent years, together with the additional layers of protection afforded by DRM systems and license contracts, have led to a much more restrictive access to works (Eschenfelder, 2008) and to greater control on the part of the rightholders. Not surprisingly, a good number of experts

have come to the conclusion that there is sufficient reason for “ethical disobedience” (Litman, 2003), given the perceived rupture of Locke's notion about the justice of ownership (Tavani, 2005). Meanwhile, to some extent as a reaction to this overprotection of works, the copyleft movements arose, with initiatives as interesting as the Creative Commons licenses, whose successful development has modified and substantially complicated the previous setting.

In the academic community, professors and students have modified their behavior regarding information, both when they act as users and when they become creators. The possibilities of using digital information and networks have been multiplied and diversified, allowing for modification, sharing and distributing digital works. Yet we have also seen a process of “democratization” in the context of creation, especially significant in the case of students, who after decades of using works created by third parties, may now more easily become active and prolific authors, and not only of traditional forms of work (essays, final projects, postgraduate dissertations), but also other means and forums, such as student journals, research symposiums, or professional conferences (Association of College and Research Libraries, 2013).

At the junction of both changes, in legislation and habits, we find copyright to have become a crucial issue, even considered as an authentic obstacle for the development of teaching and learning activities (Fisher & McGeeveran, 2006; Hobbs, Jaszi, & Haufderheide, 2007; Lipinski, 2007). Professors often discover that they cannot use the works they had intended for elaborating their teaching materials; or they might not be sure whether they can use them or not, and the fear

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of infraction dissuades them from use. Moreover, there is the question of whether exception to copyright for certain specific uses in the classroom would also apply to online teaching sessions. In turn, students encounter similar problem areas, either when using works as third parties or regarding the rights they may have to papers of their own elaboration. Along the way, abusive “cutting and pasting” has made plagiarism a serious academic problem.

This panorama has made copyright legislation a very serious matter. It has a great impact on the activities of university students, yet proves inadequate for the needs of the digital environment. It is only logical for students to have some basic knowledge about how to deal with the matter of copyright and problems surrounding it. For instance, do they know how they may use the works of third parties to prepare their classwork or their dissertation? Do they know if it makes a difference if a work is in digital or analogical format, or whether it can be found on or off the university campus? Are they familiar with the rights they themselves have regarding the work they produce? Do they know the basic characteristics and possibilities of the copyleft-type licenses? Most studies about these issues have focused almost exclusively on one consequence, plagiarism (Townley & Parsell, 2004; Koehler, 2008; Rettinger & Kramer, 2009; Saunders, 2010; Wheeler & Anderson, 2010; Vanacker, 2011; Albitz, 2013; Gunnarsson, Kulesza, & Pettersson, 2014; Strittmatter & Bratton, 2014). Fewer efforts are dedicated to determining the levels of knowledge and depths of misunderstanding that students have today. Two research studies carried out in Taiwan (Chou, Chan, & Wu, 2007; Wu, Chou, Ke, & Wang, 2010) underline the confusion and erroneous interpretations, e.g., that all contents available on the Internet are free to use, at no cost; that all educational uses constitute fair use; and that any downloading is permitted for students paying tuition. Also deserving mention here is the study by the Joint Information Systems Committee (2012) focusing specifically on doctorate students, again reflecting the generalized absence of clarity when it comes to copyright related with the publication and diffusion of one’s PhD research. More positive results were obtained by Datig and Russell (forthcoming) in their study of international students attending New York University Abu Dhabi, making manifest that a majority had at least a basic understanding of copyright and intellectual property issues.

In light of this situation, our research objective was to determine the level of knowledge of university students regarding basic aspects of copyright, with questions of a general nature and more specific items pertaining to academic activity. Furthermore, because of their growing relevance and possibilities of application to this setting (Kleinman, 2008; Kapitzke, 2009; Kapitzke, Dezuanni, & Iyer, 2011; Fortney, Hennessy, & Murphy, 2014), we believed it essential to address knowledge about the new copyleft movements. With these objectives in mind, we surveyed a sample of undergraduate students at the Universidad de Extremadura, a medium-sized Spanish public university. The results are reported and discussed below. But first, to facilitate their comprehension, a brief introduction on the key aspects of Spanish copyright legislation is offered, with emphasis on those facets affecting the educational realm.

SPANISH COPYRIGHT LAW AND THE ACADEMIC ENVIRONMENT: AN OVERVIEW

As in other countries having a civil law system, in Spain the distinction between economic and moral rights is essential, granting great relevance to the latter. Thus, legislation protects the habitual moral rights of paternity/attribution and integrity, as well as others (disclosure, modification or withdrawal). And unlike in common law countries, these rights cannot be waived. We should also underline something not only true of Spain but of all the countries undersigning the Berne Convention (WIPO, 1971): it is not necessary for the author to fulfill any formal prerequisites in order to obtain the copyright of his or her

work, as these rights come into effect at the very moment a work is created. The duration of copyright in Spain is, as in most of Europe, 70 years after the author’s death. Concerning exceptions and limitations to copyright, Spanish legislation includes the most usual ones: private copying, quotations, news, parody, library privileges, or illustration for instruction. Given its relevance for the purposes of this study, we will focus on the latter of these.

Illustration for teaching is a traditional exception. It has been addressed in numerous national laws, based on article 10.2 of the Berne Convention, which allows “the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice.” One noteworthy characteristic of this norm is that it does not establish quantitative limitations, only that the extent of use be “justified by purpose” and “compatible with fair practice” (Ricketson, 2003). The European directive of 2001 regulates this copyright exception in article 5.3a. It affects both the right of reproduction and that of communication to the public, so long as use is made in order to illustrate scientific work or teaching activities. It also demands that use be made to that extent justified by the non-commercial finality pursued, and that the source be indicated (except when impossible), including the author’s name. Unlike other exceptions, here no system of remuneration is required.

The transposition of the European directive in Spain came into effect somewhat late (Spain, 2006) and it allowed the teaching exception to be included for the first time. Specifically, its article 32.2 establishes that teachers of formal education do not need authorization (by the creator) to perform acts of reproduction, distribution and public communication of small fragments of works or of isolated works of a plastic or figurative photographic nature, excluding textbooks and university handbooks, as long as they be used for the illustration of educational activities in the classroom, to the extent justified by the non-commercial finality pursued, and except when impossible, the name of the author and the source be included. Unfortunately, the positive fact of their inclusion in the law was annulled by their unduly restrictive content, guided by a strong pre-digital philosophy that does not come close to resolving the problems of education in the current scenario. Additional restrictions to what is established in the directive are numerous (Bercovitz, Garrote, González, & Sánchez, 2006): they may only benefit professors, not students; only formal education, when the directive includes any educational or research purposes; textbooks and university handbooks are not included; and most significantly, only “in the classroom”, which leaves online teaching activities relegated to oblivion. All quite absurd for a legal reform meant to adapt education to the digital setting. These restrictions neglect many of the habitual uses of work for teaching purposes, for example digital reproductions to be made available in classrooms, on virtual campuses or by email; as pointed out by Carbajo (2012), such acts would be “for” the classroom and not “in” the classroom.

Before closing this section we should bring to light the content of another law making reference to copyright and education: the Statute of the University Student (Spain, 2010). Among the student’s rights it specifies recognition of the authorship of work elaborated during one’s university undergraduate or postgrad studies, and protection of the intellectual property of such work (article 7.1.x). Among obligations, it mentions that of abstaining from using or cooperating in fraudulent procedures during examinations or when preparing papers to be evaluated (article 13.1.d); that is, it refers to the copyright of works by third parties. Its article 27.2 establishes that only with the express authorization of the student can the works or exams of the student be used for any purpose other than a strictly academic one. In effect, as Casas (2012) warns, these rules do not add anything new to what is already established in the law of intellectual property, which already states that a student holds the same moral and economic rights granted to any author.

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