SUMMARY NOTES: DE SESSION –INTELLECTUAL RIGHTS/COPYRIGHT LAW AND IMPLICATIONS

Present: Scotty Rhode, Cynthia Smith, Marty Nikou, Mike Ferguson, Ralph Kam, Pat Patterson, Marcia Roberts-Deutsch, Kara Kam-Kalani, Gregg Gruwell
Tuesday, March 17 2:30 – 3:40

The group listened to an audio presentation from legal counsel for University of New Hampshire.
Referenced audio file http://it.unh.edu/index.cfm?ID=02D5668A-EE4B-4728-17AD0B9D3A4EC968

Then the group discussed questions or follow up points.

Using/Showing Student work to rest of class

Emerged as a concern in the presentation the fact that one cannot share student work with others in a class (or later class) without their permission as that is their ‘product’. Some instructors like to show examples of good or exemplary work; other instructors use photos from students (e.g. on Flickr) demonstrating their final work products.

There is a desire to be able to show and share, that is part of education. Don’t want to lock down access that prevents this kind of sharing and learning from each other.

The solution would be to get a release. One option is to have a general release at the start of the semester that all students are asked to sign just to be covered. Then do not have to hunt down later if decide to use their work as samples. Would need to determine how they ‘sign’ via distance, what constitutes formal acceptance

Or, can have the sharing e.g. posting pictures be their option – if “they” choose to share or post up work and/or pictures. If they share with the class, that is their choice (still face the issue of release if use in other classes.) But if it is left to students to do/choose, then have to be aware of not penalizing those who don’t.

Question about how formal does release have to be; does an email approval work?
Discussion: Perhaps better to formalize, have a generic form. Just to be safe, mitigates the risk. Cynthia will try to find out some standardized language out there to borrow and make available for all DE instructors to use.

Question - if we have waivers, question was asked - where will they be held? Who is responsible? Need to be clear regarding who is in charge of record keeping.
Discussion: Was felt that faculty need to hold onto waivers they gather for student samples and hold on to them if they are going to be using repeatedly.

It was noted that individual instructors have legal liability coverage through UHPA.
Getting permission

When using copyrighted material, was emphasized in the audio presentation and by some in the room that it is *always* better to just get that permission or get the license; take the time to establish that approval. Sometimes this is easy, sometimes can be a lot of work to get approval from publishers, esp. when seeking approval to use professionally produced educational materials.

Can use excerpts without approval but they need to be *short* - less than a minute or a few minutes.

TEACH Act 2002 indicates if a video is made expressly for educational purposes (and thus profit), cannot just use it since you are diminishing the commercial value. You have to get a license for it.

There were differing opinions related to question of – if you show something once in class, likely you are ok; if you show it every semester, you need to get permission – both for DE and in class. One person interpreted the law as stating that if you show the whole thing for educational purpose in class (e.g. show and comment) – it is ok; if on DE, it must be password protected. Do not need permission. Others interpreted the law as meaning you must get approval. There was some debate about interpretation. People should listen carefully to the audio presentation. Need to clarify – repeated use of material in its entirety for use in commenting on it, teaching about it in class - do you need approval?

Cable Courses that use extensive sections of video series need to pay for licensing. This potentially limits use on the web for example in terms of making available on Video on Demand. Can be shown on VOD if password protected *and* if publisher agrees. Agreements need to be explicit.

TEACH Act updated copyright law to specifically deal with DE. There is increased concern about materials made available on the internet (versus traditional copyright issues in the class) because on the web, can be copied/reproduced and distributed to infinite number of people. Recognize, TEACH Act drafted during period of earlier technologies, now with more elements able to be accessed, gets more complicated.

**Question** about quality – if you are reproducing in poor quality, e.g. compressed form, does this represent something that is not restricted, since you are not really reproducing that work of art, that product?

**Discussion:** Unclear.

**Question** about use of films on demand. Is use of these films ok?

**Discussion:** Website providing access to films on demand makes very clear copyright requirements and terms of use. Students can access individually in a password protected format. Be aware, if you integrate into your class, films on demand access is dependent on library offering/funding these resources.
Question: A way to avoid issues of copyright is to link to sources rather than incorporate actual material on one’s website. However if you send students to a link that is plagiarized (e.g. YouTube), are you culpable?
Discussion: Seems to be. Certainly ethical problem, is it a legal problem? Unclear.

Question about use of data. Is cumulative data (e.g. student performance in a class as a whole, statistical analysis of results) ok?
Discussion: If cumulative and anonymous, should be ok.

Question - can you pull off streamed video presentations and put on YouTube, then link to it. Is this public domain? (for example a streamed talk on another University’s website). If you download, and imbed into your Laulima site – is that ok?
Discussion: Just because something is publicly broadcast, it is not necessarily in the public domain. Tricky since issue is how something is used, which might determine (example given of B-roll film of commercial products that made company look bad in how it was used.) Likely they will say yes. But whose is it? Filmmaker? Institution that hosts the video? Unclear.

How to know the law and interpret?

There is a copyright office at UH; however, slow response time and they focus on issues with greatest liability risk. Faculty members and administration have to be primarily responsible for interpreting the law but need to be more aware of available resources.

Minimum security for TEACH Act is password protected – Laulima is; some sites are not.

Question was raised - is it possible to develop very clear, prescriptive policy that makes things explicit and *clear*.
Discussion: Maybe try to do this in-house – develop clear policy for HCC. Pay out to practicing lawyer or faculty member from Richardson School of Law to help develop? Or have periodic a q and a sessions to clarify as questions arise, perhaps this fall? TEACH Act - most recent and immediately applicable law - is critical law to be aware of, maybe have someone come in and do more substantive analysis. Perhaps a session in Fall. Gregg sent several useful links about these issues, interpretations of TEACH Act 2002.

Established needs that Cynthia will follow up on:
- Common language on release statement
- Need College, institutional statement about commitment to protect intellectual property rights – should be posted up on public site.
- Figure out a way to compile questions as they arise to get list of questions, to be answered through legal consul/q and a session etc..