

Lies, Damned Lies, and Copyright (Mis)Information: Empowering Faculty by Addressing Key Points of Confusion

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Abstract

The University of Minnesota Libraries' Copyright Program surveyed and interviewed faculty, instructors, researchers, librarians, and library employees to document their knowledge of key areas of copyright law that intersect with common academic practices. All respondents were found to have considerable weaknesses and gaps in knowledge around many key issues. The findings show that all campus populations are in need of further education about the complicated issue of fair use. Some of the findings also suggest avenues for improving copyright education efforts, such as targeting misconceptions about the relation of citation to copyright law, and tying instruction on fundamental principles to faculty authors' ownership interests in their works.

Introduction

The University of Minnesota Libraries began turning their in-house copyright expertise outward to provide informal copyright consultation to the campus community in the early 1990s. The Libraries' copyright programming soon grew beyond individual consultation to include informational workshops, and a comprehensive informational website that was first launched in 2004. The Libraries also began to take an increasingly active role with campus policy development around

copyright and scholarly publishing issues. The Libraries' Scholarly Communications Collaborative was formed in late 2006, and has provided significant campus outreach on authors' rights issues, which include copyright, as well as other legal and policy issues.

The author joined the University Libraries in July of 2009, charged with building a more systematic approach to copyright education and outreach, and more particularly, with developing expanded and targeted copyright education opportunities for faculty members and other instructors and researchers at the University. The author's early experiences in this role, including interactions during expanded consultation services, and at workshops and presentations, provided anecdotal evidence that many faculty members possessed limited or actively incorrect knowledge in areas where copyright law had the potential to significantly impact research, teaching, and other academic work. While library colleagues appeared to have much stronger understandings of copyright concepts, some also seemed to share some of the misinformation or misconceptions common among faculty members.

In the fall of 2010 we launched a coordinated program of copyright workshops for faculty (and open to library staff), focusing on some areas of perceived weakness, specifically copyright fundamentals, and

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issues around use of third-party materials. However, rather than relying on unsubstantiated impressions and perceptions for program development, we also determined to take some steps to systematically inquire into and document copyright knowledge of faculty members and library employees.

This research project launched in the fall of 2010, aimed at assessing in greater detail the state of faculty and library employees' knowledge on this campus, in order to tailor future workshop offerings. Broader goals also included documenting faculty knowledge in order to contribute to other library professionals' educational efforts on copyright, and potentially contributing to legal scholarship around issues of individual's knowledge and comprehension of copyright law.

Hypotheses

Anecdotal observation suggested three areas of copyright law that had a high degree of overlap with the work of many academics (including librarians, library staff members, faculty, and other University instructors or researchers), and where the knowledge of many individuals seemed particularly weak or actively incorrect. Literature review showed that little research had been done on copyright knowledge levels in higher education,¹ but some of the limited evidence available seemed to support several of these anecdotal observations.² Accordingly, this project aimed to investigate three hypotheses:

1. That many academics have a weak understanding of fair use, the copyright doctrine that allows limited use to be made of works protected by copyright, even during the term of their legal protection.³ Additionally, that academics' understandings of fair use are imbalanced in ways that reflect professional biases—such as the apparently-common misconception that all educational uses are fair uses—and influential guidelines and modes of practice, such as the Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions (“Classroom Guidelines”),⁴ a non-binding agreement promulgated by publishing and educational interest groups in the mid-1970s that has been influential in shaping the copyright practices of many academic institutions.⁵
2. That many academics are unaware of the provisions of the “Classroom Use Exemption”,

under which copyright law permits certain activities in the classrooms of non-profit educational institutions, regardless of the vagaries of fair use.⁶ The Classroom Use exemption is one of a very few areas where copyright law provides fairly straightforward provisions for particular kinds of uses, so although it is of limited application, it is a useful bit of law for all classroom instructors to know about.

3. That many academics are unclear about their own rights in works they create, primarily because they lack knowledge about fundamental copyright provisions. For example, anecdotal evidence suggested that many individuals believed an active step was required for a work to be “copyrighted”; this has not been the state of the law since 1978.⁸

The author also anticipated that library employees (librarians and other library staff members alike) would share many of the weaknesses and misconceptions of teaching faculty and researchers, but that, due to their greater professional involvement with copyright issues, library employees would, in general, have a stronger grasp of the details of copyright law relevant to higher education uses.

Methodology

Input was collected from research subjects via an online survey and in-person interviews. The survey consisted of approximately 30 questions on various copyright issues. All University of Minnesota faculty, instructors and other research staff equivalent to faculty members, as well as all librarians and library staff members, were eligible to participate. Not all eligible individuals received invitations to participate, and invitation was not random. Participants were recruited via email lists accessible to subject specialist librarians, among registrants for Libraries copyright workshops, from faculty governance groups related to the libraries, and through some University Administration contact lists. The total number of survey respondents was 73, about evenly split between library employees (32) and faculty/instructors/researchers (41). Several respondents did not complete the full survey, so for some questions, the total number of respondents is considerably smaller.

A very limited number of in-person interviews were also conducted with individual faculty members. Each interview lasted about an hour, and cov-

ered many of the same topics as the online survey, but the inquiry was much more open-ended. The purpose of the interviews was to act as a check on researcher bias in construction of the survey questions, as well as to provide more contextual insight into a few individuals' perceptions of copyright issues. Recruitment for these interviews was also non-random, although diverse disciplines were represented, including social sciences, humanities, health sciences, and engineering.

Limitations and Biases

Because of the non-random invitation of participants, and the fact that invitations were extended to faculty primarily through library contacts, it is likely that individuals with a strong affinity for or interest in the University Libraries are overrepresented in the faculty/researcher respondent population. It is not clear how that might skew responses on copyright questions; strong library affiliations may or may not be linked to greater or lesser copyright knowledge.

Even had the sampling been more random, the respondent population would still have been skewed by self-selection. Some participants may have responded simply because they are more inclined to participate in surveys generally; it is not clear that the copyright knowledge of these individuals would be notably better or worse than average. However, other participants may have responded due to a particular interest in copyright issues; it seems likely that these individuals may have a slightly better understanding of copyright than their less-interested peers. However, these individuals may also, by dint of having been exposed to more copyright information in general, have absorbed slightly more of the common copyright misconceptions than their colleagues.

Statistical Significance

With a low number of participants and non-random sampling, very little of the information collected rises to any level of statistical significance. In a few cases, differences between faculty/researcher responses and library employee responses met a T-test for statistical significance ($\alpha = 0.05$); these instances are noted, but because the population was non-random, may still be questioned. Throughout this paper, the author draws only suggestions and inferences from most of the information collected; to generalize it even to the University of Minnesota faculty population would be premature.

To the extent that this information documents the knowledge of the relevant populations in more systematic fashion than anecdotal impressions and perceptions, it will be useful in planning future educational and outreach efforts within our own copyright program, and it gives some indication of areas that would be ripe for further research. The author also believes that it may provide useful information to professionals in other libraries who would like to begin developing a copyright program, or an assessment of knowledge levels within their own user populations.

Results

Respondents' Self-Reported Histories, Knowledge, and Training Experiences

Survey responses showed that all respondents had, at some time, participated in one or more activities that presented legal issues related to copyright. The most common copyright-implicating activities included textual quotation (94% of respondents had done this), distribution of electronic copies (93%) or photocopies (86%), and use of images in class (77%) and on presentation slides (74%). Respondents did not appear to be heavily into multimedia use; only 54% had played audio or video in class, and only 13% had re-used audio or video sources in their own work.

Many respondents had transferred the copyrights via a publication agreement (67%) and posted copies of their own work online (61%); a considerable minority had also uploaded their own work to a subject or disciplinary repository (33%, although that question caused minor confusion for survey respondents, and also had to be explained to in-person interviewees.) More respondents had signed an agreement with provisions for payment (advances/residuals/royalties) (26%), than had negotiated with a publisher about public availability of their work (16%).

Copyright was clearly an area that presented challenges to respondents' academic functioning; 17% had spontaneously changed their plans for a publication or presentation because of concerns about copyright. Thankfully, fewer appeared to have experienced such pressures to change their work from third parties (9%), but some had even changed plans for their *research* due to copyright concerns (9%).

Respondents were asked to assess their level of copyright knowledge compared to "the people [they] work with"; a clear majority rated themselves as having about as much copyright knowledge as most of

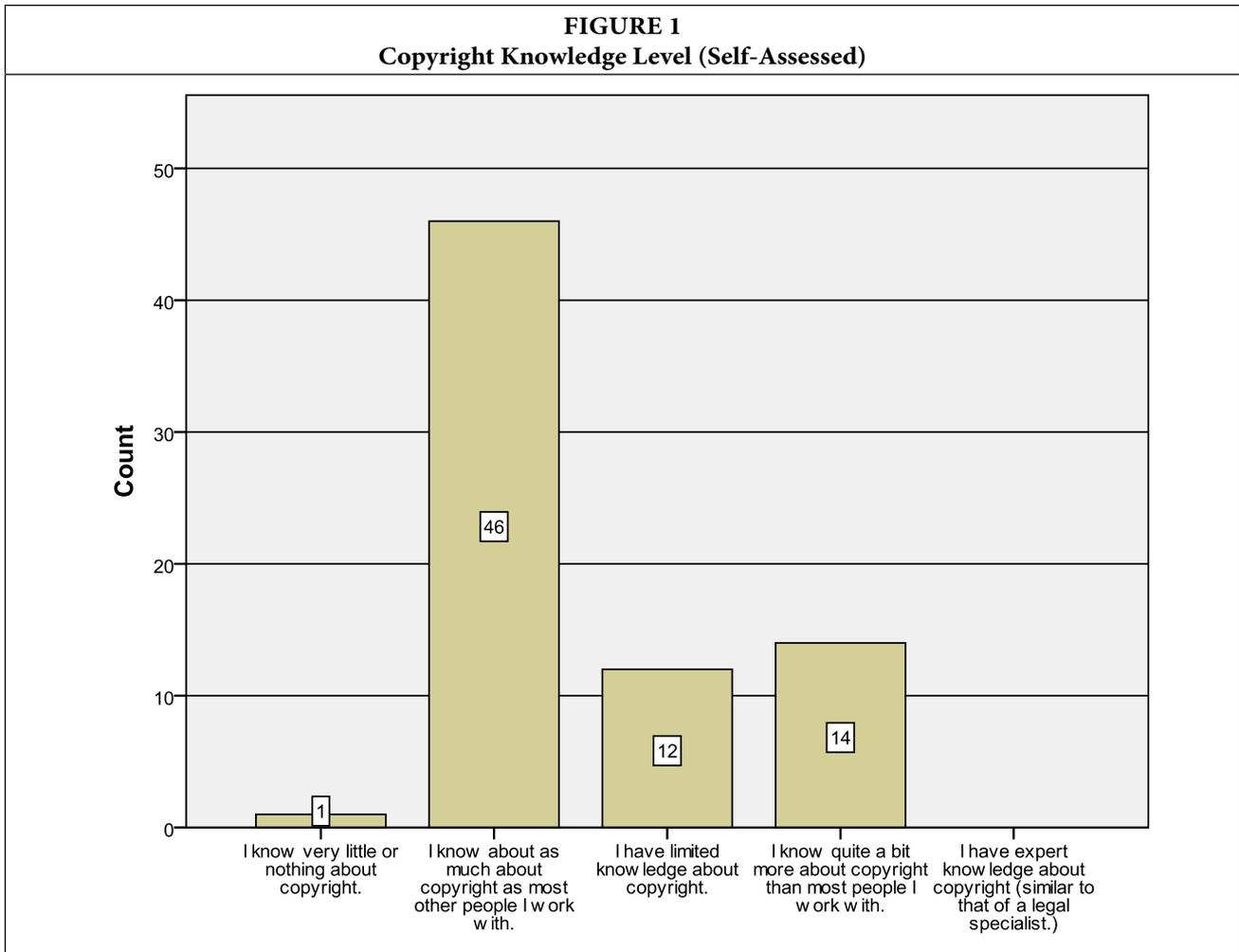
their colleague. The two main groups of respondents, library employees (including librarians and other library staff members), and faculty (including faculty members and other faculty-like instructors and researchers) self-assessed along very similar lines, al-

though the one respondent who admitted to knowing "little or nothing about copyright" was a faculty member.

Although copyright knowledge levels were self-assessed at similar levels in both groups, library em-

TABLE 1
Respondents' Copyright Histories

Have you ever...		Count	%	Have you ever...		Count	%
Questions about use of © materials				Questions about © ownership			
Quoted text from another's work in your own work	Yes	66	94%	Reproduced audio or video from another's work in your own work	Yes	9	13%
	No	4	6%		No	60	87%
	Total	70			Total	69	
Distributed electronic copies of an article (or other work)	Yes	64	93%	Transferred copyright in your own work	Yes	46	67%
	No	5	7%		No	22	32%
	Total	69			Don't know	1	1%
Distributed photocopies of an article (or other work)	Yes	61	86%	Total	69		Posted copies of your own work online
	No	7	10%	Yes	43	61%	
	Don't know	3	4%	No	27	39%	
Total	71		Total	70			
Displayed images in class	Yes	53	77%	Uploaded your own work to a subject or institutional repository	Yes	23	33%
	No	16	23%		No	43	62%
	Total	69			Don't know	3	4%
Used slides with images (in class+A42, at conferences, etc.)	Yes	52	74%	Total	69		Signed a pub/dist agreement with advance/royalty/residual payments
	No	18	26%	Yes	18	26%	
	Total	70		No	51	74%	
Played audio/video in class	Yes	37	54%	Total	69		Negotiated w/pub/dist about rights ownership or public availability of your work
	No	32	46%	Yes	11	16%	
	Total	69		No	57	83%	
Shared slides with images	Yes	36	51%	Don't know	1	1%	Questions about © affecting research/publication
	No	34	49%	Total	69		
	Total	70		Spontaneously changed publication/presentation due to copyright concerns	Yes	12	
Posted readings/other media on password-protected course site	Yes	35	50%		No	56	81%
	No	35	50%		Don't know	1	1%
	Total	70		Total	69		
Reproduced images from another's work in your own work	Yes	33	49%	At urging of another, changed publication/presentation due to copyright concerns	Yes	6	9%
	No	35	51%		No	62	90%
	Total	68			Don't know	1	1%
Distributed physical copies in class	Yes	28	41%	Total	69		Changed research plans due to copyright
	No	41	59%	Yes	6	9%	
	Total	69		No	62	90%	
Had students read aloud or perform works in class	Yes	12	17%	Don't know	1	1%	
	No	57	83%	Total	69		
	Total	69					



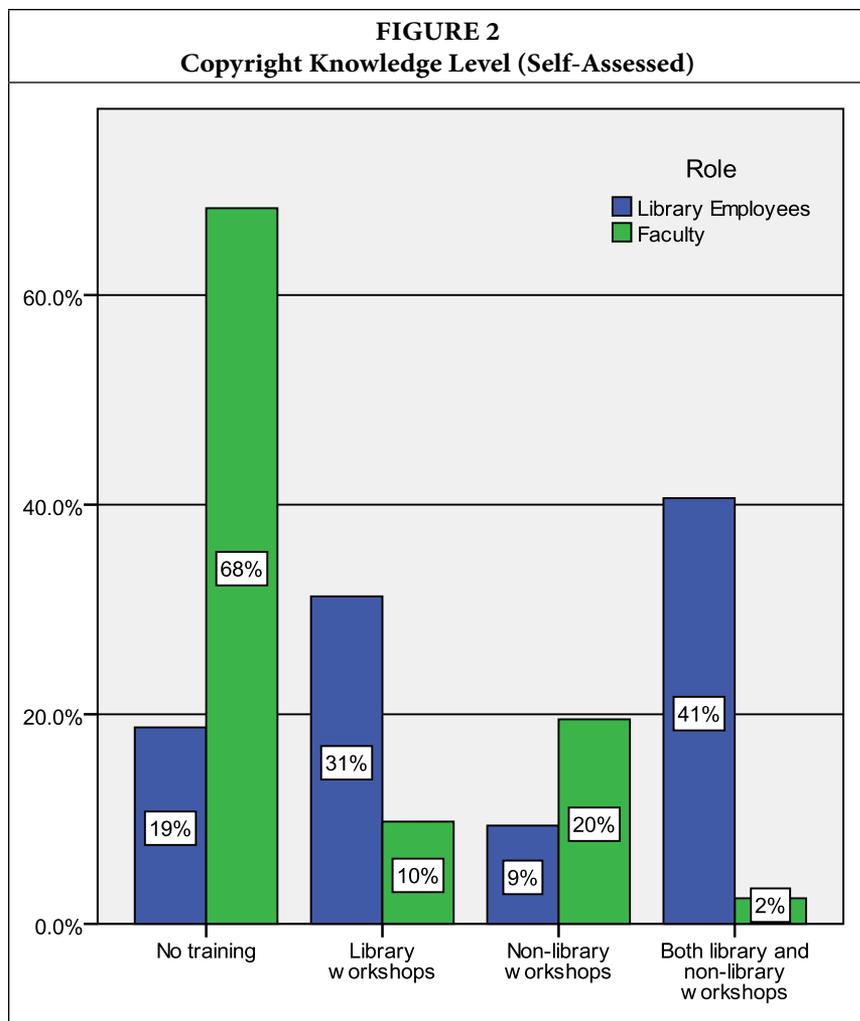
employees had considerably more copyright training than faculty, 68% of whom reported no training at all. Not surprisingly, more librarians had attended University of Minnesota Libraries copyright trainings, while more faculty had attended non-library trainings. But many library employees had attended trainings both in- and outside the Libraries.

Fair Use Knowledge

Several of the survey questions posed hypothetical situations and asked respondents to indicate which, if any, of a list of potential copyright considerations would be relevant to that situation. In a few of the situations, specific copyright exemptions such as the Classroom Use exemption were relevant, in others, only fair use considerations were relevant.⁹ All of the situational questions included an “other” option, which presented respondents with an open-ended

write-in text field in which they could supply any considerations they considered relevant that were not on the list presented.

In three of the situational questions, the primary copyright issue was fair use. One question asked about textual quotations, one asked about incorporating an image on a conference slide or poster, and one asked about posting copies of resources on a course website. Each question presented at least ten possible considerations to respondents. Some were directly related to statutory fair use factors, and, such as “the educational/scholarly nature of your work” (relevant to purpose), or “whether the original work is more factual or more creative” (relevant to nature of the copyrighted work). Some were more indirectly related to statutory factors, such as “whether the original material was freely available online” (indirectly relevant to market harm, and nature of the copyrighted work). Some potential



considerations, such as “whether your use completely recontextualizes, reimagines, or repurposes the original work”, were related to transformative use.¹⁰ A few were absolutely not relevant (though really creative minds could probably come up with a way to spin them as such), including “whether your use of the materials is “spontaneous”, and a few were misstatements of law, such as “how many words you are quoting, as a flat number (i.e., no more than 250)”.

Because copyright, and fair use in particular, is very nuanced, answers were coded generously. If a consideration had any relevance to fair use analysis, direct or indirect, and the respondent indicated that they thought it was relevant, this was counted as **correct**. Failures to identify relevant considerations were *not* counted as incorrect, even though such a failure can sometimes seriously undercut a fair use determination. Instead, failures to identify a consideration that was directly relevant to one of the statu-

TABLE 2
Identification of Fair Use Considerations

Textual Quotation			
Mean Score, by Role	Correct IDs (Possible 8)	Incorrect IDs (Possible 2)	Missed (Possible 5)
All Respondents (N=51)	3.06	.53	2.94
Library Employees (N=23)	3.26	.48	2.96
Faculty (N=28)	2.89	.57	2.93
Images on Conference Slides/Posters			
Mean Score, by Role	Correct IDs (Possible 9)	Incorrect IDs (Possible 1)	Missed (Possible 4)
All Respondents (N=48)	2.58	.33	2.77
Library Employees (N=21)	3.10	.33	2.52
Faculty (N=27)	2.19	.33	2.96
Posting Resources to Course Websites			
Mean Score, by Role	Correct IDs (Possible 8)	Incorrect IDs (Possible 2)	Missed (Possible 4)
All Respondents (N=49)	3.31	.61	2.55
Library Employees (N=20)	3.40	.75	2.50
Faculty (N=29)	3.24	.52	2.59

tory fair use factors were counted as **missed**; failures to identify indirectly-relevant considerations were not counted at all. Only considerations that were absolutely not relevant, or misstatements of the law, were counted as **incorrect**. For each question, the number of correct, incorrect, and missable (i.e., directly relevant to a statutory fair use factors) considerations varied.

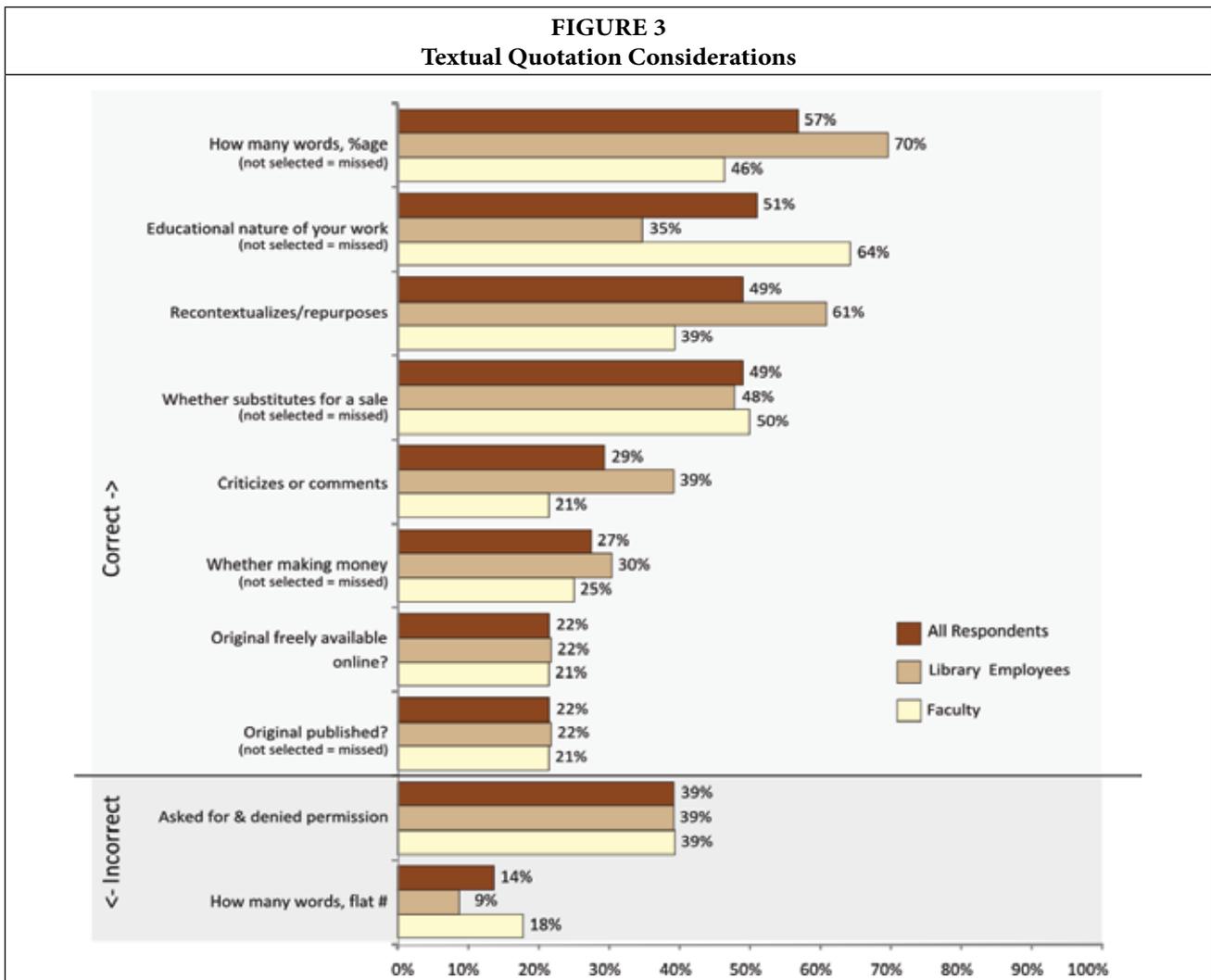
On all three of the fair use questions, respondents managed to identify less than half of the correct considerations, and missed more than half of the considerations directly related to statutory fair use factors. Respondents' ability to sidestep the misleading incorrect considerations varied, but because so few considerations were counted as incorrect, mean scores are somewhat meaningless. Most of the time, library employees slightly outperformed faculty, catching more correct considerations, and missing fewer of them.

Specific Fair Use Situations

Based on the self-reported histories, textual quotation was the most familiar fair use situation for most of the respondents. Even on this relatively familiar ground, respondents' knowledge only reflected partial understandings of the law. There were eight considerations counted as correctly relevant to textual quotation; four of these were correctly identified more frequently (by 49–57% of respondents), and four were recognized far less frequently (by 21–29% of respondents.)

There is little pattern to which types of fair use considerations (direct or indirect; statutory or transformative) were more familiar to respondents. Three of the more-frequently recognized correct considerations correspond directly to statutory fair use factors: how many words quoted, as a percentage of the original work (amount used); the educational or scholarly nature of the borrowing work (purpose); and whether

FIGURE 3
Textual Quotation Considerations



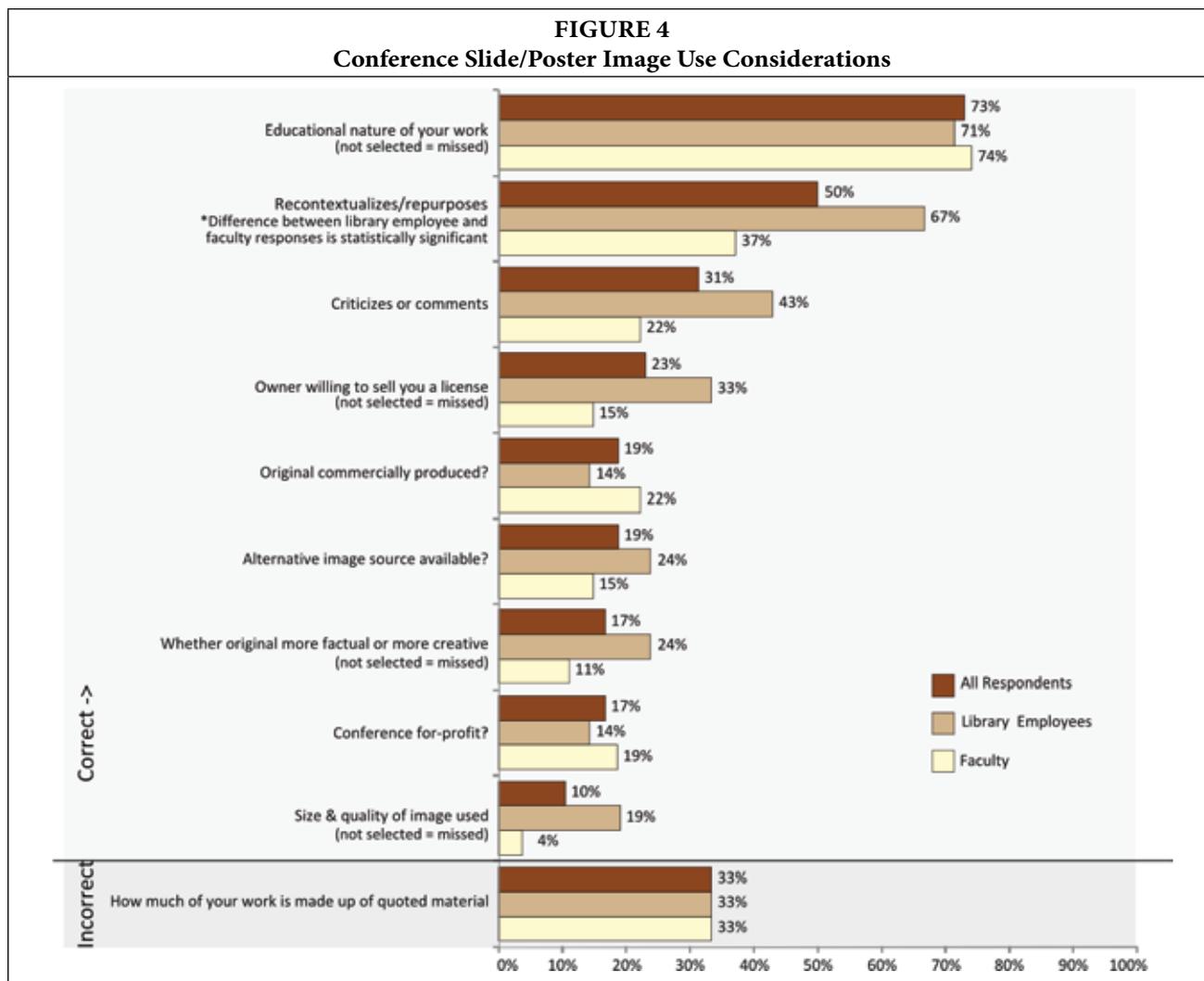
the use substitutes for a sale (market harm). The other frequently-recognized correct answer, “whether your use completely recontextualizes, reimagines, or repurposes the original work”, relates to transformative use. Of the less-frequently recognized correct answers, two correspond directly to statutory factors: “whether you will be making money from your work” (purpose); and “whether the original work has ever been published” (nature of the original). The other two relate to the statutory factors less directly: “whether your work criticizes or comments on the original work” (purpose, part of transformative use), and “whether the original is freely available online” (very indirectly related to market harm).

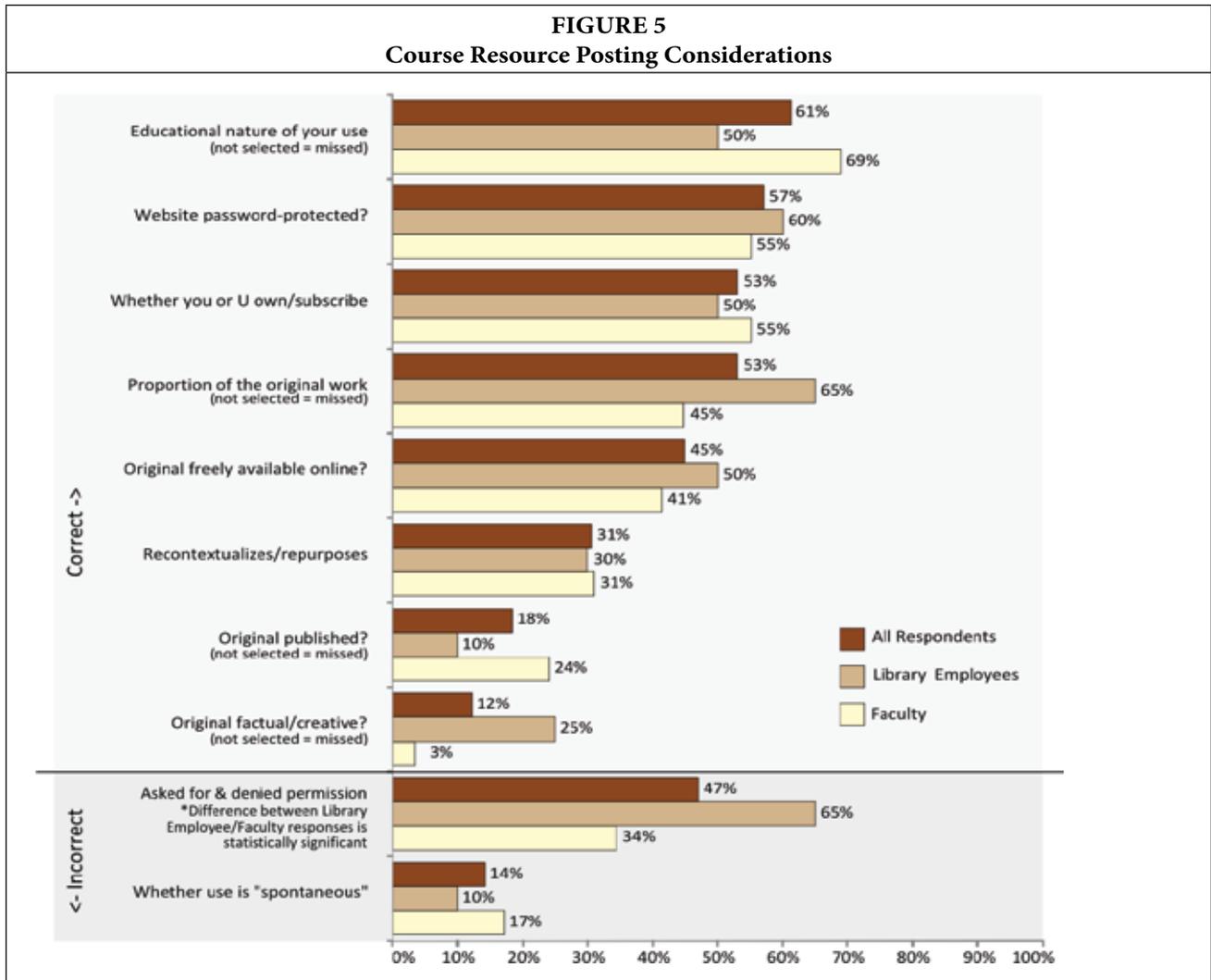
Both anecdotal experiences and this project’s open-ended interviews suggest that many faculty members have been told by their own publishers that they cannot quote more than X number of words.¹¹

Respondents did fairly well at avoiding the incorrect answer that the flat number of words quoted (i.e., no more than 250) was relevant. 14% of all respondents were tripped up by this, and faculty at a higher rate (18%) than library employees (9%). However, several respondents selected both the percentage of the original work and the flat number as relevant, which suggests that question was not well-constructed—the two choices were meant to be clearly exclusive ways of counting the amount of the original work being used.

In the other two fair use situation questions, there were not such clear lines to be drawn between factors that relatively large amounts of respondents recognized as relevant and those only familiar to a smaller group. In the image use question, most of the potentially correct considerations were recognized by less than a third of respondents. This may reflect that respondents were more likely to have experience quot-

FIGURE 4
Conference Slide/Poster Image Use Considerations





ing text (94%) than using images (74%) (see Table 1). It may also reflect the fact that many considerations highly relevant to image use have developed in fairly recent cases,¹² and that influential practice tools such as the Classroom Guidelines do little to address image use. Very clearly, respondents were not aware that the size and quality of an image as used on a conference slide or poster could be a relevant consideration; only 10% of respondents recognized that it as such. Respondents to the image use question were also fairly often tripped up (33% of the time) by the misleading consideration, “how much of your work is made up of quoted material”. This misleading option was included to provide further insight into respondents’ understanding of the “amount used” statutory factor, and suggests that there is some confusion over the relevant context in which to measure the amount; amount is only correctly measured with respect to the

proportion of the original work used, not how much of the derivative work is made up of quoted material.

Posting resources on a course website was the least familiar of the fair use situations for most respondents; only 50% of them had done this. (See Table 1.) However, 93% had distributed electronic copies of an article, and 86% had distributed photocopies, so the relevant considerations should not have been terribly unfamiliar. Indeed, respondents did recognize many of the relevant considerations at relatively high rates (four of eight “correct” answers were recognized by more than half of respondents, and a fifth was recognized by 45%). However, two considerations directly relevant to statutory factors, “whether the original has ever been published, and “whether the original work is more factual or more creative” (both relevant to the nature of the copyrighted work) were missed by 80% or more of respondents.

The idea that spontaneous uses are more likely to be fair is an element of the Classroom Guidelines that has made its way into some court decisions on fair use,¹³ but not many respondents (12%) fell for a related misleading consideration, “whether your use is “spontaneous”. Faculty members did so slightly more frequently (17%) than library employees (10%). It may be that this element of the Classroom Guidelines has not been absorbed by academics as relevant to fair use decisions. However, in-person interviews suggested that some faculty members use different language to refer to the same concept; more than one interviewee mentioned something like a “rule” that allowed “one-time use” that sounded quite a lot like spontaneous use as discussed in the Guidelines.

Statutory Fair Use Considerations

Survey results suggest that neither library employees nor faculty are particularly well-acquainted with the details of the four statutory fair use factors. A few of the considerations that are directly related to statutory factors were recognized by relatively large numbers of respondents across all the fair use questions, but even these factors confused respondents in less familiar situations. For example, respondents did well recognizing that the amount used was a relevant consideration in the relatively familiar textual quotation and article-sharing situations; however, they did not recognize considerations directly related to amount used in the context of including images on slides or posters.

Respondents very frequently recognized that an educational or scholarly purpose was relevant to a fair use determination. But they often failed to recognize other considerations relevant to their purpose, such as whether they were themselves making money from their use or whether the conference they were presenting at was for-profit.

It is difficult to explain why library employees, who generally performed slightly better than faculty on these questions, missed the relevance of “the educational/scholarly nature of your work” more frequently than faculty across all three fair use questions. It may be that the structure of the survey confused respondents: since the situations presented were all educational or scholarly, this consideration was always presented as simply “the educational/scholarly nature of your work”, whereas most of the other considerations presented were phrased using the word “whether” (e.g., “whether the original has ever been published”).

Library respondents may have been unclear that the educational/scholarly purpose was presumed.

Another possible explanation for the discrepancy is that library employees have been exposed more often than faculty to the idea that educational use does not immediately and completely equate to fair use; that is, faculty may actually be *overestimating* the importance of educational or scholarly purpose. This is weakly supported by responses to another situational question about showing films on campus, where 12% of faculty respondents, as opposed to 3% of library respondents, indicated that “all educational uses are allowed as fair use.” This interpretation is also somewhat supported by the in-person interviews, where respondents expressed beliefs that all educational uses, broadly—or more narrowly, just all classroom uses—were presumptively legal. But this is far from conclusive.

The “nature of the original work” factor appeared to be least well-understood by both groups (and library employees did not appear to have even a slightly stronger understanding than faculty on these considerations.) Less than 25% of respondents (and as little as 12%) recognized “whether the original has been published” or “whether the original work is more factual or more creative” as relevant (each consideration was presented in two of the three fair use situations), despite those being the main points of analysis for the “nature of the original” factor.

Respondents seemed aware that market harm was relevant to fair use determinations, although it is difficult to compare responses across the fair use questions because the survey instrument was not well-designed to test understanding of this question—few of the market harm considerations were repeated in the same terms in different questions. Respondents seemed to recognize market harm factors most easily when presented in terms of lost sales (textual quotation) or in terms of existing subscriptions (course resources). Many respondents indicated that whether a course website was password-protected, or whether a resource was freely available online affected the fair use analysis, but it is difficult to tell if they believed these indirectly relevant to market harm (in which case, they are appropriate considerations), or if they believed them to be relevant independently (in which case, they indicate a misunderstanding of the law.)

The general unfamiliarity with the “nature of the original” factor weakly supports the hypothesis that

many academics’ knowledge of fair use is influenced by the Guidelines on Classroom Use—the Guidelines don’t address the “nature of the original” factor. The author’s expectation that academics are heavily influenced by misconceptions derived from the Classroom Guidelines is not well supported by survey and interview responses. Few respondents identified considerations based directly on elements of those guidelines, although faculty did always indicate reliance on guideline-derived information at a higher rate than library employees. It seems clear that, although misconceptions may exist among academics, it is more common that academics simply possess limited or incomplete knowledge about statutory fair use considerations.

Transformative Use

Transformative use is an expansive and rapidly-developing area of fair use law, about which respondents demonstrated incomplete knowledge. Respondents recognized “whether your use completely recontextualizes, reimagines, or repurposes the original” as relevant quite a bit more frequently than they recognized “whether your work criticizes or comments on the original work”, although both are highly significant parts of the transformative use analysis, and the latter may be more often an important element of educational and scholarly uses.

Although both groups recognized recontextualization as relevant more often than they did critical purpose, library employees did quite a bit better than faculty members at recognizing transformative use

	Recontextualizes/ Repurposes	Criticizes or Comments
Textual quotation		
All Respondents	49%	29%
Library employees	61%	39%
Faculty	39%	21%
Image Use		
All Respondents	50%	31%
Library employees	67%	43%
Faculty	37%	22%
Course Resource Posting		
All Respondents	31%	N/A
Library employees	30%	N/A
Faculty	31%	N/A

considerations in both of the “quotation” situations. This lends some support the hypothesis that library employees are more aware of the nuanced considerations, and more recent legal developments, of fair use law. But the fact that well less than half library employees were familiar with the criticism/commentary considerations of transformative use shows that there is still much room for improvement.

Classroom Use Exemption Knowledge

Unfortunately, due to an error in survey formatting, the situational question specifically addressing classroom use of articles and handouts was not displayed to faculty respondents. Responses to the other question about in-class use shed some light on understandings of the classroom use exemption.

© considerations	Library Employees (N=22)	Faculty (N=29)
The copyright exemption for in-class performance/display (CORRECT)	64%	76%
The copyright exemption for noncommercial viewing of films (INCORRECT) α	36%	69%

α—Difference in responses between groups is statistically significant.

Faculty members readily identified copyright exemptions as relevant to showing movies in class, but they made very little distinction between a “copyright exemption for in-class performance or display”, and a “copyright exemption for noncommercial viewing of films”—although the latter does not exist. A few library employees were also misled by the nonexistent “noncommercial viewing” exemption, but statistically significantly fewer than faculty. It seems clear that library employees are more aware of the specifics of the classroom use exemption, although there is room for improvement in both populations.

Ownership and Author Rights Knowledge

Two survey questions tested purely factual knowledge about copyright ownership, with clear correct and incorrect answers. Library employees significantly outperformed faculty on both of these questions.

TABLE 5
Copyright Ownership Knowledge

The © in works you create lasts...	Library Employees (N=22)	Faculty (N=24)
...56 years α	5%	21%
...ends with your death	0%	3%
...50 years after your death α	0%	31%
...70 years after your death (CORRECT) α	95%	28%
When you create a new work, you own the © in that work...		
	Library Employees (N=23)	Faculty (N=28)
...from the moment you create it (CORRECT) α	83%	50%
...until you transfer it to someone else (CORRECT)	91%	86%
...only once you or your publisher registers it	9%	14%
...and you continue to automatically retain significant rights after you transfer it to someone else.	17%	25%
α —Difference in responses between groups is statistically significant.		

Ninety five percent of library employees recognized the correct term of copyright protection, life of the author plus 70 years.¹⁴ Only 28% of faculty recognized this correctly, and about equal numbers incorrectly believed the term to be life of the author plus 50 years, or 56 years.

Library employees also correctly recognized that copyright attaches at the moment of creation (83%),¹⁵ and that creators retain copyright ownership until they transfer it to someone else (91%). Faculty members did understand that creators retain copyright ownership until they transfer it (86%), but only half of them recognized that copyright exists from the moment of creation, and 14% of faculty believed copyrights only began after registration (as opposed to 9% of library employees). Minorities of both faculty (25%) and library employees (17%) believed that they continued to automatically retain significant rights after they transfer their copyrights to someone else; beliefs that were explored in more detail in the one other question about copyright ownership.

High numbers of respondents in both groups recognized that they continued to have the right to make fair use of their work, even after they transferred their ownership to a third party. In fact, faculty were slightly more likely to recognize this than library employees (86% vs. 79%). However, faculty were also fairly likely to incorrectly believe they retained other rights, including to the ability share articles with colleagues and others via email or on a website, or to use articles in their own teaching or authorize colleagues to do so, but library employees did not share these incorrect beliefs. These results support that faculty and library employees have some similar understandings and misunderstandings of what happens when they transfer their copyrights, but also suggests that many faculty believe they retain more rights than they actually do.

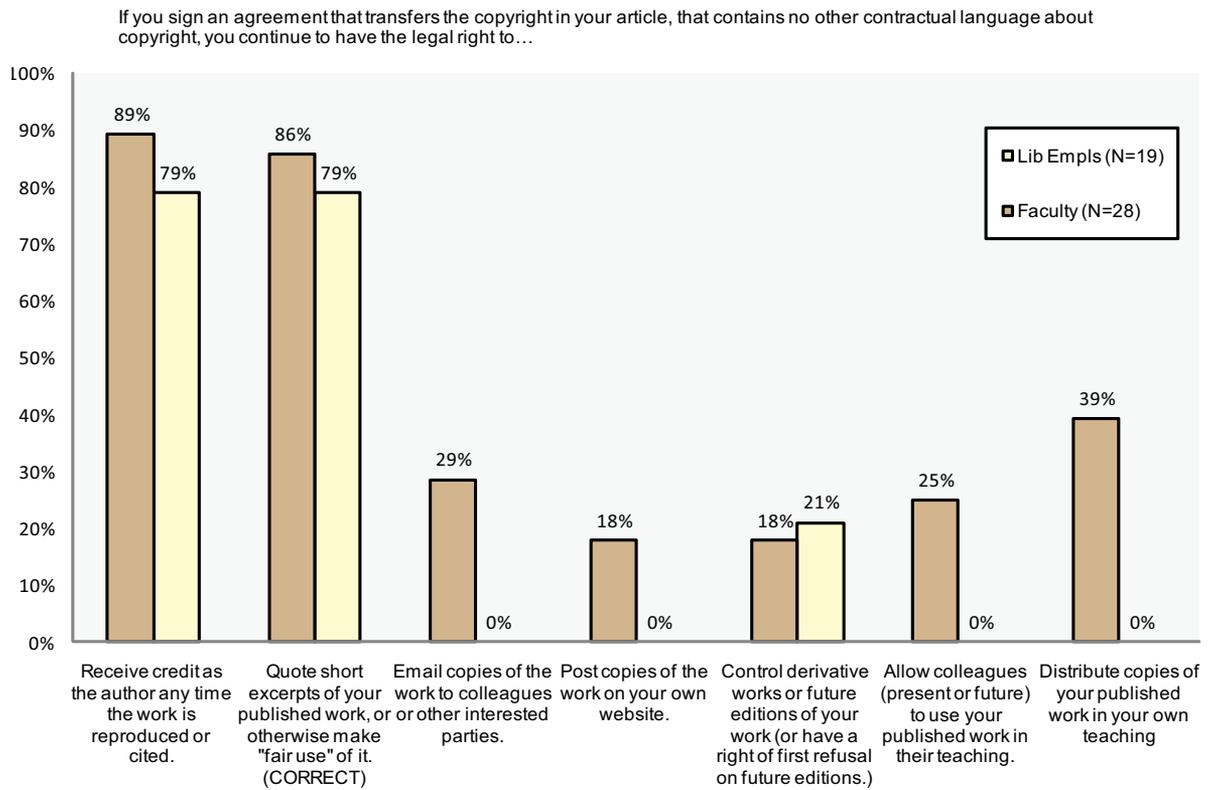
Citation and Attribution

One very striking finding, supported by both the survey and interviews, is that academics strongly believe citation and/or attribution—or, more accurately, “proper citation” or “proper attribution,” to repeat phrases invoked repeatedly in both contexts—is currently part of copyright law, although this is largely not the case.

Many populations, including academics, place a high value on formal attribution of authorship.¹⁶ But whether or not a general attribution right exists in United States law is a very technical question, to which the answer is, mostly, “no”. Other than provisions in the “Visual Artists Rights Act” (VARA), which do in fact create a right of attribution (and disattribution) for creators of certain very specific types of visual artworks,¹⁷ there is no explicit provision in U.S. copyright law for a right of attribution.¹⁸

The results of the survey question about the rights retained after copyright transfer (see Chart 6, above) show academics incorrectly believe they have an ability to control and receive attribution for their work, even when they do not own the copyright. A substantial minority of respondents in each group (18% faculty, 21% library employees) incorrectly believed that they retained a right to control derivative works or future editions, even if their contract did not explicitly address that issue. A very substantial majority of respondents in each group (89% faculty, 79% library employees) incorrectly believed that they retain a right, under copyright, to “receive credit as the author any time the work is reproduced or cited.”

FIGURE 6
Understanding of Rights after Copyright Transfer



The situational use questions also provide support for this finding. Although neither citation nor attribution was among the pre-set considerations for any of the questions, respondents frequently raised the issues spontaneously, using the write-in “other” field. The responses to the situational question about textual quotation are perhaps the most striking: of eleven write-in answers (out of 51 responses to the question), *ten* spontaneously raised citation or attribution as a consideration.¹⁹ Similar ideas can be seen in the situational question about using images on conference slide or poster. In that case, nine of 48 respondents provided write-in answers, and six of those spontaneously raised citation or attribution as a consideration.²⁰

The in-person interviews also support that academics believe copyright involves a right of attribution. Interviewees actually raised “proper citation” or “with full and accurate citation” *before any other considerations* when providing considerations for using third-party works, and more than one expressed beliefs that entire articles can be shared with colleagues and students whenever there is proper citation.

Conclusion: Empowering Faculty Members and Library Employees

Despite methodological limitations, the results of this research suggest several areas where educational efforts can be targeted that will empower both faculty members and library employees in their encounters with copyright.

- Perhaps most clearly, all academics may benefit from increased educational efforts that convey that the attribution practices key to avoiding plagiarism are *not* currently part of copyright law, and do not provide legal protection for users of third-party materials. Individuals may be unknowingly exposing themselves—and sometimes their institutions—to potentially serious legal risk, if they believe that any attributed use (or even any attributed educational or course-based use) is a legitimate one. Because attribution is clearly something that academics, and particularly faculty, feel strongly about, attribution issues may also be a potential point for library employees to

engage otherwise-reluctant faculty in campus discussions around copyright.

4. Faculty have particularly limited understandings of the fundamentals of copyright law, such as how copyright interests are created and how long they last. Many academic authors are clearly signing copyright transfer agreements without really understanding how their own rights are truly impacted. This is damaging both to the interests of individuals as authors and creators, and to libraries and the system of scholarly publishing as a whole. Tying information about copyright fundamentals directly to academic authors' ability to control future editions of their own works, and to their ability to legally distribute their own work to colleagues and students, may elicit greater interest from them, and have greater impact upon campus communities.
5. Fair use is an area of tremendous confusion. While some academics do carry misconceptions derived from the influential Classroom Guidelines, other guidelines documents, and institutional and industry practices, a far greater problem is that many academics simply lack information on fair use at all. While some of the relevant considerations were familiar to many respondents, even some of the basic statutory considerations, such as "nature of the original work", were unfamiliar to a large majority of respondents.

Almost any educational efforts about fair use are bound to produce useful results, even if the subject may be intimidating to library educators. Library employees can feel some confidence taking educational leadership around fair use issues: survey results suggest they are at least a step ahead²¹ of their faculty colleagues in understanding the nuances and more recent developments in the law.

Notes

1. Jasmine Rita Renner, "An Analysis of the Knowledge Levels of Ohio's Post-Secondary Educators in Public/State, Private and Two-Year Colleges and Universities Regarding Copyright Ownership of Web-based/Online Courses and Materials." (Ph.D. Dissertation, Bowling Green State University, 2002), 7, <http://www.eric.ed.gov/ERICWebPortal/contentdelivery/servlet/ERICServlet?accno=ED475736>.

2. *Ibid.*, 76. (Observing that post-secondary educators

were "to a large extent unstudied in [copyright law.]", Mark E. Chase, "An Analysis of the Knowledge Levels of Media Directors Concerning Relevant Copyright Issues in Higher Education," in *Proceedings of the 1995 Annual National Convention of the Association for Educational Communications and Technology (AECT)* (Anaheim, CA, 1995), <http://www.eric.ed.gov/ERICWebPortal/contentdelivery/servlet/ERICServlet?accno=ED383290>. Chase shows, at 64–65, that only about 18% of "media directors"—academic professionals who worked with audio- and visual media—were "proficient" on copyright law issues, and that fair use was an area of particular uncertainty. However, this study also found, at 65, that media directors were more "proficient" in understanding "the classroom print guidelines", which calls into question the author's understanding of copyright law, as the classroom print guidelines are not, and have never been, law. (See note 5, below.)

3. 17 U.S.C. § 107 (1992). <http://www.law.cornell.edu/uscode/17/107.shtml>

4. *Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions with Respect to Books and Periodicals*, H.R. REP. NO. 94-1476, at 68–70 (1976) ("Classroom Guidelines"). <http://www.lib.umn.edu/copyright/classguide.phtml>.

5. Kenneth D. Crews, "The Law of Fair Use and the Illusion of Fair-Use Guidelines," 62 *Ohio State Law Journal* 599, 615–619 (2001). Crews discusses the history of the Classroom Guidelines in detail, recognizing them as "[t]he best known of all fair-use guidelines", and documenting the Guidelines' development as a response to desire among academics for "more specific guidance". He observes that the Guidelines are attractive for "their promise of relative certainty about fair use", but notes that even individual copyright experts who give the Guidelines much deference ultimately have difficulties justifying some of their provisions. Later in the same article, Crews documents several instances of litigation in which the Guidelines, which were intended as minimum standards, became enshrined as maximum standards at individual institutions as a result of settlement negotiations and their consideration (although never binding confirmation as legal standards) in several court decisions. (641–656).

6. 17 U.S.C. § 110(1) (2005). <http://www.law.cornell.edu/uscode/17/110.html>

7. The author regularly employed audience polling via audience-response clickers as part of workshops and presentations in the 2009–2010 academic year. These informal polls regularly reflected that 60–80% of faculty attendees believed that they did not themselves own any copyrights,

and that similar numbers believed copyright attached at the moment of registration.

8. See 17 U.S.C. § 102(a) (1990), <http://www.law.cornell.edu/uscode/17/102.html>; 17 U.S.C. § 201(a) (1978), <http://www.law.cornell.edu/uscode/17/201.html>; and 17 U.S.C. § 302(a) (1998), <http://www.law.cornell.edu/uscode/17/302.html>.

9. In all of the situational questions, public domain status of a work or explicit permission from the copyright holder, could have been relevant. Only one respondent, a librarian, spontaneously raised that possibility via the “other” field—and did so consistently for all the use questions.

10. “Transformative use” is a judge-made doctrine that allows for fair use even in cases when many or all of the statutory factors would traditionally weigh against fair use. See, e.g., *Campbell v. Acuff-Rose Music*, 510 U.S. 569 (1994), <http://www.law.cornell.edu/supct/html/92-1292.ZS.html>; *Kelly v. Arriba Soft Corp.*, 280 F.3d 934 (9th Cir. 2002), https://www.eff.org/files/filenode/Kelly_v_Arriba_Soft/20030707_9th_revised_ruling.pdf.

11. Sometimes this advice about not quoting more than X number of words is framed by publishers as an explicit part of fair use. Many faculty seem to be unclear that the number threshold is a choice the publisher makes to manage their own legal risk, rather than a true interpretation of what the law allows.

12. See *Kelly v. Arriba Soft Corporation*, 336 F.3d 811 (9th Cir. 2003), https://www.eff.org/files/filenode/Kelly_v_Arriba_Soft/20030707_9th_revised_ruling.pdf, *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146 (9th Cir. 2007), <https://www.eff.org/files/filenode/Perfect10vGoogle-9thCir12-2007.pdf>. This line of cases, although technically only binding in 9th Circuit jurisdictions, has been highly influential in establishing that dimensionally-smaller, lower-resolution images can legitimately be construed as containing a smaller “amount” of an image, for purposes of fair use analysis. The cases have been followed outside of the 9th Circuit, and outside of their search-engine context, by other decisions, such as *Bill Graham Archives v. Dorling Kindersley Ltd.*, 448 F.3d 605 (2d Cir. 2006), http://fairuse.stanford.edu/primary_materials/cases/GrahamKindersley.pdf, and the entertaining *Warren Publishing Co. v. Spurlock*, 2009 WL 2412542 (E.D.Pa. 2009), <http://www.paed.uscourts.gov/documents/opinions/09d0945p.pdf>.

13 See, e.g., *Marcus v. Rowley*, 695 F.2d 1171 (9th Cir. 1983), cited in Crews, “Law of Fair Use”, 51.

14. 17 U.S.C. § 302(a) (1998). <http://www.law.cornell.edu/uscode/17/302.html>

15. *Ibid.*

16. Greg Lastowka, *Digital Attribution: Copyright and the Right to Credit*, 87 B.U. L. REV. 4, 78–84 (2007); ; Rebecca Tushnet, *Payment In Credit: Copyright Law and Subcultural Creativity*, 70 LAW & CONTEMP. PROBS 135, 157–160 (2007), <http://www.law.duke.edu/shell/cite.pl?70+Law+%26+Contemp.+Probs.+135+%28spring+2007%29>. Lastowka points to the Creative Commons movement and the Copyright Office’s proposed orphan works legislation as examples of a growing interest in codifying attribution in law. Tushnet documents context-specific rules of attribution in a number of professions and milieus.

17. 17 U.S.C. § 106A (1990). <http://www.law.cornell.edu/uscode/17/106A.html>

18. Lastowka, “Digital Attribution”, 69. “A significant right of authorial attribution exists at only one place in the copyright law: the Visual Artist Rights Act of 1990 (VARA).”

19. Two of the “other” answers, both from faculty, also included *proper use of quotation marks* as a relevant copyright consideration—a further piece of evidence that faculty members are conflating plagiarism and copyright issues.

20. Other write-in responses included fair use generally, whether the poster/slides would be shared online, and whether you had permission from the copyright holder.

21. Maybe only half a step sometimes, but that’s a good position for leadership in collaborative learning!