

## Copyright protection and the new stakeholders in online distance education: The Play's the Thing

by Bruce L. Mann

### Abstract

This paper analyses the university as an Internet intermediary in the current climate of online distance education, classifies the stakeholders associated with the university in Web course management, and explores the need for an "Instructional Design Copyright Law". The situation is likened to a theatrical production, with front-of-house preparations, backstage operations, and tragic characters.

### Contents

[The players in the play](#)

[The play's the thing](#)

[Conclusions](#)

### The players in the play

In a report to the World Intellectual Property Organization, Waelde and Edwards (2005) named 'the university' as one of several new types of Internet intermediary [1]. [Table 1](#) summarises seven types of stakeholder in the online distance education, showing 'the University' as an Internet intermediary.

Table 1: Reclassification of stakeholders in the online distance education industry.	
Author	Intellectual creation (UK) and exercise of skill and judgment (Can), a subject matter expert, usually academic staff or visiting faculty.
Developer	Instructional designer, video and graphics producers.
Content provider	Course tutor and general office staff for copy typing, information retrieval, compilation, document editing.
Internet intermediary	University Internet service provider run by in-house non-academic staff and work-term students.
Rights-holder	Owner of the Web course.
End-users	Students with their passwords.
Public	Private citizen patronizing the University through taxes, or donations to support higher education.

## Front-of-house: Balancing public policy

Up front-of-house, there are the policies. Balance is the current spin, with a distinct emphasis on overprotection. Article 2 in the European Court of Human Rights (2003) and Article 2 in the Human Rights Act (1998) states, "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to *education* and to *teaching*, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions." The International Covenant on Economic, Social and Cultural Rights states that "Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education." [2] The Universal Declaration of Human Rights states that everyone has the right to an education, and that higher education should be accessible to everyone, based on merit [3].

"In 2004 the General Assembly of the World Intellectual Property Organization agreed to adopt a proposal offered by Argentina and Brazil for the Establishment of a Development Agenda for WIPO" ("Item 12") to reduce the inequality of access to education that undermines development and social cohesion [4]. In most international IP treaties, the rights are always mandatory and the exceptions optional, and nobody appears to be in any rush to harmonise exceptions to copyright [5].

In Europe (including the United Kingdom), EC Directive 2001 seeks to permit exceptions or limitations in the public interest for the purpose of education and teaching. Member states are encouraged to provide exceptions or limitations for cases such as educational purposes, including distance education. In the U.K., the test of copyright, according to Copyright Designs and Patents Act 1988, is an *original expression* in a literary work on a Web page or in a Web database. Copyright of original works in the common law tradition, emphasises the economic role of copyright, "a means by which socially beneficial activities can be made financially worthwhile for those engaging in them ... Civil Law sees copyright as springing from the personality rights of the individual creator of the subject matter." [6]

In Canada copyright purports to protect author rights, comprising both the economic value of a work that is, the traditional Anglo-American copyright; and the moral rights of attribution, integrity, and first publication of the work, akin to *droit d'auteur* in Continental Europe [7]. In 2004 the Supreme Court of Canada in CCH recognised that fair dealing is part of copyright law and not merely an exception to it [8]. The decision is seen as common sense within a climate that favours of an absolutist view of intellectual property composed uniquely of rights. In Canada the test of copyright is the author's exercise of skill and judgment. In 2005 Canada some digital copyright reform came to higher education with Bill C-60. Although Bill C-60 purported to promote public access to Internet-based learning by permitting institutions to communicate lessons featuring copyrighted materials via telecommunication, the Bill required educators to destroy the lesson within 30 days of the conclusion of the course and retain records that identify the lesson for three years [9]. Bill C-61 is the latest proposed update to copyright law that would make educational institutions responsible for preventing their students from reproducing the lesson, or retaining the course materials. The ephemeral nature of educational materials would then become reminiscent of a time when lecture notes were erased from a blackboard soon after the lesson was given.

The education community, led by provincial ministers of education, protested the recommendations, while Canada's security IT community issued a public letter warning of its danger to that budding economic sector. The debate is highly polarized. Spokespeople for each side speak most often of "fair" laws and "balance" when they feel that their interests are being neglected [10]. On the rights-holder side there are demands of "respect," "control," "protection," "modernization," and "harmonization," while education and consumer advocates call for "innovation," "technology neutrality," and "access." Rights-holders seek to "... place creators at the very centre of the Copyright Act ...," while others claim that "... the Canadian public and the health of the Canadian cultural community and the Canadian economy should be at the heart of the legislation. "Meanwhile, the majority of Canadians (and a majority of Members of Parliament) likely think copyright reform is largely about 'cracking down' on the circulation of MP3s on the Internet: the media and the Ministers seem to agree that this is the issue and the tone most likely to engage the layperson." [11]

In the United States the report on Copyright and Digital Distance Education (2007), section 107 states that the limitations on exclusive rights and the fair use of a copyrighted work, including teaching, scholarship, or research is not an infringement of copyright. Factors considered in determining fair use are that:

“(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work. The fact that a work is unpublished shall not itself prevent a finding of fair use if such finding was made on a consideration of all the above factors.” [12]

Balance is currently accomplished in some jurisdictions, through providing open or partial access to course outlines, course notes, pre–prints for publication, and podcasts of lectures or other reusable objects. “Modern copyright legislation in Canada recognizes the importance of protecting works while seeking to balance author’s rights with user’s needs.” [13] “A balanced copyright framework will help to support the use of the Internet to foster innovation and learning, while establishing stable and predictable marketplace rules.” [14]

### **Backstage — The Internet intermediary and the rights–holder**

Backstage, the stakeholders are talking at cross purposes.

“Universities that are committed to distance education, whether launching new initiatives or moving their established programs into a digital environment, have spent considerable time, effort, and money organizing their resources to support these activities. At a minimum, educational institutions have invested in hardware and software; established necessary administrative units; added or enhanced functional areas such as instructional design; and provided training, technical, and support services to faculty.” [15]

When a university wants to re–purpose or re–use a distance course or part of a course, they are talking about either: 1) re–using all or most of the course as often as needed but managed by lesser qualified and therefore less costly contractual or sessional instructors; 2) selling the entire course or part of the course for profit, to an outside interest or online repository as “a learning object”, “instructional artifact” or “instructional device”; [16] or, 3) paring down the course into a “learning resource” (online handouts, jot notes, podcasts or video clips, a reader or resource pack) [17]. According to these uses by the university the exceptions and limitations to copyright in Article 5 applies (emphasis added)

2(c) in respect of specific acts of reproduction made by publicly accessible libraries, *educational establishments* ... which are not for direct or indirect economic or commercial advantage;

3(a) use for the sole purpose of illustration *for teaching* or scientific research, as long as the source, including the author’s name, is indicated, unless this turns out to be impossible and to the extent justified by the non–commercial purpose to be achieved;

Moreover business leaders continue to look to the talent pool in higher education,

We are facing growing competition. Business no longer has the time nor the resources for extensive retraining ... . We need the education system to develop these thinking, reasoning, learning, living–with–change and problem–solving skills ... . But we must get beyond the computer “how to’s” to understanding and applying concepts ... it is important that we ask fundamental questions about our view of computers and how we use them, at all levels of the education system. [18]

Hence public interest, or rather, business interest in using online higher education continues to grow. The undergraduate enrolment at Canadian universities between 1995 and 2005 for example, increased 19 percent with most of this growth occurring since the latter part of the 1990s. This represents an increase of 32 percent over the decade, a faster rate of growth than at the total undergraduate level. Most of this increase has occurred since the latter part of the 1990s. Full–time students are the drivers behind this growth as their numbers have grown 28 percent since 1999. Women have constituted the majority in full–time undergraduate studies

for some time and now their enrolment at the total graduate level is equal to that of men. Since 1995, men's share of full-time undergraduate enrolment has decreased from 46 percent to 42 percent. Men's share of graduate enrolment dropped from 56 percent to 51 percent over the same period [19].

An increasing number of institutions of higher learning which have opted to develop an online arm are being forced to confront the issue of who has the right to own, manage, adapt and disseminate teaching materials in digital format and the mechanisms which deliver them. [20]

An interesting inclusion in the Directive is "The organisational structure and the means of funding of the establishment concerned are not the decisive factors in this respect." [21] Interesting because for some universities that aim to resell Web courses, funding *is a decisive factor*.

"The high cost of online education puts enormous pressure on universities to reconfigure distance learning projects to diffuse courses in the digital environment. One approach to cost-cutting is to 'unbundle' or 'de-skill' teaching. In the same way the industrial production line divides the job of building a car into many separate functions, digital technology can be used to break apart a university course and the job of teaching it. Instead of a course being the complete work of a professor, the various component parts of the teaching job (course development, delivery, revision and evaluation) are being separated from individual faculty members and assigned to a variety of different employees. And, just as unbundling of the teaching profession is being accomplished, universities are using the opportunity to make a claim for ownership of course content. Because faculty ownership hinders the ability of the employer to shape, revise and sell courses, many administrators view it as an obstacle to be overcome." [22]

The administrations at UCLA and York University (Canada) started their own separate subsidiary (Cultech), in collaboration with a consortium of private sector firms, for the commercial development and exploitation of online education. Arizona State University also developed its own program of online courses outside the reach of the faculty so it could be run like a business and avoid the bureaucratic red tape that faculty participation entails [23]. Meanwhile corporate owners of intellectual property recycle public knowledge from the higher education sector for private reward by loading university-generated, publicly-funded research into journals, databases [or network systems], then charge the universities for their use, the costs of which have become too great for budgets of small and mid-size universities and students that it has triggered litigation between universities and the copyright collecting societies which represent the owners [24].

### **The victims — The author and content provider**

More often than not the Internet intermediary is also the rights-holder or partial rights-holder, whereas the Web course author may also be a content provider and developer, and may or may not be the rights-holder or partial rights-holder. This amounts to the author doing most of the work and the university making most of the money. "What may be given short shrift in this paradigm is the protection of 'victims', such as authors seeking take down of pirated work. Since intermediaries are totally protected from liability, they can ignore even reasonable demands for take down without fear and institutional inertia will encourage them to do so." [25]

Internet technology creates the potential to separate the creator of course content from the deliverer, to take apart the faculty member's job and assign different parts to separate members of a casualized academic labour force [26].

"When universities seek to induce their already employed lecturers to devise teaching and learning materials for distance learning purposes by making special payments or commission a Web course developer to select the appropriate software and coordinate all content contributions, this alone cannot override whatever rules about collaborative or collective authorship a particular copyright regime has chosen to

impose.” [27]

The concern expressed in this paper and elsewhere in higher education is, as Noble (2002) has suggested, that “once faculty put an Author’s course online, the knowledge and course design skill embodied in that material is taken out of their possession and transferred to the administration. It also allows the administration, which claims ownership of this commodity, to peddle the Web course elsewhere without the original designer’s involvement or even knowledge, much less financial interest. The buyers of this packaged commodity, meanwhile, other academic institutions, are able thereby to contract out, and hence outsource, the work of their own employees and thus reduce their reliance upon their in–house teaching staff. As time goes on, administrators gain more direct control over course content and the potential for administrative scrutiny, supervision, regimentation, discipline and even censorship of these course design increases dramatically [28].

Before 2006 academic staff at Memorial University in Canada retained sole ownership of all courses they produced. The University offered them a copyright buyout of C\$1481 (on top of the course production fee of C\$3519) and in return an ASM jointly owned copyright with the University. Under a new arrangement, the course production fee is C\$5000, copyright is jointly held, but the author consents that DELT is entitled “to use all or part of the course including but not limited to graphics, video, animations and simulations, and modules, in a digital learning object repository.” The author concedes control as well as knowledge of where and when their intellectual property is used given that objects in the learning repository may be freely used by colleagues at member institutions in the Canadian Learning Object Exchange (CLOE) [29] and its U.S. counterpart Multimedia Educational Resources for Learning and Online Teaching (MERLOT) [30] [31].

In the U.K., the University and College Union (UCU) serves as the largest trade union and professional association for academics, lecturers, trainers, researchers and academic–house teaching staff. As time goes on, administrators gain more dirrelated staff working in further and higher education. In 2002, the AUC sent out this letter about online distance education to its membership,

“The association believes that the materials created by staff members for distance education courses should be treated in exactly the same fashion as materials created for traditional courses. Authors should seek to retain copyright of this material, whether it is in print or electronic form, while allowing for its free use by the institution for legitimate teaching purposes. Where the institution chooses to exploit such material commercially, the revenues should be distributed in line with negotiated arrangements.” [32]

### The paying public

The paying public does no better than the ‘victims’. The private citizen must pay four times for a single right–protected expression: 1) by contributing to funded research of academic staff though their taxes (including the development of knowledge and understanding (*scientia*) in whatever discipline [33]); 2) by paying the salaries of the academics engaged in peer review of research; 3) in buying back the results from publishing companies [34], and for university students and their aging parents, there are the tuition fees and costs of the learning resources.

### The end–user

“It is not universally accepted that the interests of the public and those of users always coincide” [35], which is taken to mean in this paper that not all public interests are end–user interests, whether we mean downloading music, file sharing or online distance education courses. As for the end–user, although permitted access to right–protected software and specialized network applications, teaching staff and students have always been treated unfairly, notwithstanding government policy statements and university strategic plans [36], given only hobbled or incomplete versions of the software and services to use, under the stigma of ‘academic’ or ‘educational version’.

Some of the usual reasons for end–user interest in online distance education include [37]

- Plenty of choice among online degree programs in any given area.
- Course material comprises typed postings, and more recently, podcasts, that are accessible anytime.
- Attendance is a function of postings typed and the content analysis instrument used, and

more recently, voice-over IP

- Permits instructor-centred or student-centred teaching methods.
- Interactions are considered 'safe' with the data secured behind a password.

For the end-user, the balance may satisfy the need to access to learning resources, and for other online instructors, particularly beginning instructors, a model to follow. Indications are that monetary earnings of the copyright holder are not diminished by public interest in these materials. The recent decision of the Supreme Court of Canada in CCH — recognizing the fundamental point that fair dealing is a part of copyright and not merely an exception to it — stands as the high water mark of common sense in a world tending far too strongly in favour of an absolutist view of intellectual property as composed uniquely of rights.

### The developer

Course instructors and guest tutors who design instruction and facilitate student learning in Web courses should be aware of their rights, and the rights of their students, consistent with the wording in Article 9 in the Human Rights Act:

"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, *teaching*, practice and observance."

Instructors preparing to teach online have the right to make decisions about the content and method of their teaching. In preparing to teach law, for example, the novice developer will want advice on how to approach the task, "the essence of which is that law is an argument not a statement, it is to be debated and discussed." [38] Law school instructors encourage students to 'think like a lawyer', consistent with the Socratic method of teaching. Socratic teaching involves "exposing illogic and ignorance of the Good." [39] From the Socratic perspective then, 'thinking like a lawyer' requires the development of an ability to identify and analyse issues that contribute to a solution to underlying legal contradictions or legal policy problems, distinguish relevant from irrelevant facts, and provide appropriate advice after considering all arguments. Teaching law, especially teaching non-law learners, includes helping them to reduce feelings of being anonymous decontextualised, degendered beings whose principal distinguishing characteristics are their personality, their learning style, or their approach to learning [40]. A good example of guidance by Socratic teaching method can be found in *The Meno* wherein Socrates helps Meno as he guides a slave boy's understanding of Pythagoras' theorem [41]. Most contemporary forms of reduced guidance (e.g., cognitive apprenticeship, inquiry-based instruction, and others) are essentially derivatives of Socratic instruction.

---

## The play's the thing

### Web courses and the law

Most Web courses offer authors, developers, and content providers information and design tools. Since these tools are customarily grouped together under a course name and protected by a password, they can be considered a system; a Web course management system (WCMS), like *eScript* or *WebCT* continues to play a supporting role [42]. A WCMS begins its life as an empty database shell for a Web course, and ends its life as a repository of confidential data generated by staff and students. Coincidentally two forms of lawful protection can be afforded a WCMS, database copyright for the genuine intellectual creation in the selection or arrangement of the content – that is, the course preparation technique or instructional design, and the *sui generis* right for the investment in verifying and presenting the contents of the database – that is, the data saved in the WCMS. [Table 2](#) summarises the two forms of lawful protection in a WCMS.

**Table 2: Two forms of lawful protection in a Web course management system (WCMS), one for the front-end, another for the back-end.**

Focus: Instructional design in the WCMS.	Focus: The data saved in the WCMS.
IP law: <ul style="list-style-type: none"> <li>• Database copyright vs. the public interest and the fair dealing exceptions.</li> </ul>	IP Law: <ul style="list-style-type: none"> <li>• <i>Sui generis</i> database right vs. the public interest in general [55], the public interest defense and breach of confidence.</li> </ul>
Criterion for protection: <ul style="list-style-type: none"> <li>• Author's own intellectual creation (U.K.)</li> <li>• Genuine intellectual creation in selection or arrangement for a database [56]</li> <li>• Author's exercise of skill and judgment (Canada)</li> </ul>	Criterion for protection: <ul style="list-style-type: none"> <li>• Substantial investment of money, time, effort in obtaining verification and presentation of the contents of a database</li> </ul>
Exceptions: <ul style="list-style-type: none"> <li>• Article 2 <i>European Court of Human Rights (2003)</i> &amp; Article 2 in the <i>Human Rights Act (1998)</i> [57]</li> </ul>	Exceptions: <ul style="list-style-type: none"> <li>• Article 6 extraction for private purposes, for the purposes of illustration for teaching or scientific research [58]</li> </ul>
Cases & Reports: <ul style="list-style-type: none"> <li>• Screen captures in <i>Hyde Park</i> [59]</li> <li>• Diary in <i>Ashdown</i> [60]</li> <li>• <i>Times Newspaper Ltd v. MGN Ltd</i></li> <li>• HRH Prince of Wales</li> <li>• Web course in <i>UBC vs UBC Faculty</i> [61]</li> <li>• <i>Memorial University Faculty Association, Information Bulletin 2007</i></li> </ul>	Cases & Reports: <ul style="list-style-type: none"> <li>• Database Directive, Recital 60</li> <li>• Labour in collecting facts, in <i>British Horseracing Board v. Hill</i> [62]</li> <li>• Disclosure of course preferences, in Information and Privacy Commissioner (Canada) [63]</li> </ul>

A WCMS starts out as an empty database or front–end of a Web course. Once an instructor has added content to the database, it should be eligible for protection by copyright, and equally eligible for exemption by private study and education.

### The front–end and database copyright

This paper has focused primarily on the front–end of a WCMS and what might be called ‘instructional design copyright’ and the corresponding exceptions for fair dealing in copyright law. Instructional designers, not Internet service providers, are best suited as intermediaries to make decisions about the requirements for online higher education. Instructional designers are trained to assess the needs of learners and understand learning theory and instructional models, all to determine what’s best in online courses. Yet there is no ‘instructional design copyright’ to cover different phases of Web course management. Fair dealing and copyright law should aim to encourage the creation of new expressions, meanings, and messages, even if this sometimes means permitting the re–use of copyright materials.

“In this postmodern age where appropriation, adaptation and reinterpretation of existing texts is an established mode of cultural meaning–making (and the notion of true creation *ex nihilo* is generally dismissed as a relic of the romantic age) downstream uses of protected works might also reflect the kind of authorial creativity that copyright should encourage.” [43]

The approach is consistent with the view that statements about copyright protecting only the expression and not the ideas behind the expression are now too simplistic [44]. Indeed we need to consider if a new work merely supersedes the objects of an original creation, or adds some new purpose or character, altering the expression, meaning, or message [45].

Database copyright would likely apply to instructional design in a WCMS 'by reason of the selection or arrangement of the contents of the database the database constitutes the author's own intellectual creation' [46], that is to say "the structure was the author's own intellectual creation" [47]. Usually with help from a resident technologist or instructional designer, an academic staff member plans and revises the media and methods best suited to bring about changes in student knowledge and skills *before* the database gets filled with student records as well as student and staff work. Students are typically excluded from the design process itself. A Web course manager or university would be the copyright owner of a particular Web course preparation technique, also known as instructional design, applied to a particular course in a WCMS in a particular semester.

### **The back-end and *sui generis***

A WCMS also has a back-end, a repository of data generated by staff and students, the organisation of which would be protected by *sui generis* database rights owned by the university in a particular semester, the criterion for protection a substantial investment of money, time and effort. Once opened to registered users, the database would be necessarily be protected due to the confidentiality and privacy of the records generated by students and saved by the system as a list of student names, ID numbers, personal profiles, staff and discussion board writing, typed debates, annotations, presentations, quizzes, annotations, discussion postings, quiz data and debate data — all confidential. Exceptions would be information extracted for private purposes as well as for illustration for teaching or scientific research.

### **The developer and her instructional design**

Difficulties arise in trying to apply a legal framework to Web course preparation, more commonly known as 'instructional design.' Instructional design is a complex process of needs assessment, creation of learning objectives, selection of instructional methods, and assessment methods. In some ways, copyright law is too blunt for all of the variations of a contemporary Web course. "Canadian copyright law covers too many kinds of resources to render a uniform treatment plausible, coherent or justifiable, more differentiation is needed." [48] One reason for this variety is that instructional designers will use the same Web tools for different reasons, based on their experiences with these tools [49]. In terms of lesson enhancement there are several forms including 1) an immersive collaborative environment; 2) online self-expression; and, 3) online lesson assessment. Immersive collaborative environments (ICEs) are remarkable for increasing the quantity and quality of student interaction in a threaded discussion board or chat room. Online self-expression is most noticeable in the form of podcasts.

Resource-based teaching includes 15 types classified into four cognitive goals. These goals attempt: 1) to provide content; 2) to support a learning activity; 3) to support a learning process; or, 4) to build on other resources (*i.e.*, online textbook study guide, online readings guide, or an online lesson outline). Relevant to the discussion of resource-based teaching is that the copyright may or may not be held by the faculty member. If not,

"copyright in a literary, dramatic, musical or artistic work would *not* be infringed by being copied in the course of instruction or of preparation for instruction, provided the copying (a) was done by a person giving or receiving instruction, and copyright would not be infringed by anything done for the purposes of an examination by way of setting the questions, communicating the questions or answering questions."  
[50]

The third phase is an online learning environment (*e.g.*, virtual classroom, reach-in & grab microworld, *Second Life*). A learning environment is a place where learners work together and support one another as they use a variety of tools and information resources in their pursuit of learning goals and problem-solving activities. The focus is on meaningful learning that is active and involves students in learning by discovery [51]. Usually copyright for an online learning environment is held by some third party, not a faculty member or university. Students are required to link to an outside site and register. "Darfur is dying" [52], for example, is a video game similar to the popular migration game "Oregon Trail" or the Canadian "Yukon Trail",

where a given character faces different risks. In "Darfur" a player learns about genocide in Darfur, and find ways to become involved to stop this crisis. In medical virtual reality (VR), simulators teach doctors new skills in cardiovascular medicine [53]. Computerised discovery environments at the very least provide some sort of direction to a learner, and may provide a context for "social learning." Outside the password protection of a WCMS, where ownership and authorship of avatars are unknown, "it seems wiser to study the law of virtual worlds as a largely *sui generis* field." [54]

---

## Conclusions

Three conclusions are offered in this paper. First, a more careful delineation of the stakeholders in online distance education is needed. Secondly, rights-holders of Web courses should be able to consider two forms of database protection, one for the front-end, another for the back-end of a given Web course management system. Finally, there are three phases of Web course management for a given developer and her instructional design. In the current climate of strengthening copyright protection, any given production of a distance education course is more complex, and all indications are, that the play's the thing. 

## About the author

Bruce L. Mann is a Professor of Education at Memorial University in Canada. Professor Mann has been a visiting researcher with the Faculty of Science at Memorial, the Department of Educational Psychology at McGill University in Canada, and with the School of Interactive Multimedia at Edith Cowan University in Australia. Professor Mann's studies of Web course behavior and learning from multimedia speech prompting have been cited in many textbooks, international journals and conference presentations.

Web: <http://www.stemnet.nf.ca/~bmann/>

E-mail: bmann [at] mun [dot] ca

## Notes

1. C. Waelde and L. Edwards, 2005. "Online intermediaries and liability for copyright infringement," World Intellectual Property Organization Seminar on Copyright and Internet Intermediaries (13 April).

2. Office of the High Commissioner for Human Rights, "International Covenant on Economic, Social and Cultural Rights," Article 13 2(c), at [http://www.unhcr.ch/html/menu3/b/a\\_cescr.htm](http://www.unhcr.ch/html/menu3/b/a_cescr.htm), accessed 2 July 2008.

3. United Nations, "Universal Declaration of Human Rights," Article 26 (1)(2), at <http://www.un.org/Overview/rights.html>, accessed 2 July 2008.

4. "Geneva Declaration on the Future of the World Intellectual Property Organization," at <http://www.cptech.org/ip/wipo/genevadeclaration.html>, accessed 2 July 2008.

5. J. Boyle, 2006. "Seven ways to ruin a technological revolution" (18 December), at <http://video.google.com/videoplay?docid=-8538240380002213699>, accessed 2 July 2008.

6. MacQueen, *et al.*, pp. 41, 42.

7. D. Lametti, 2005. "Coming to terms with copyright," In: Michael Geist (editor). *In the public interest: The future of Canadian copyright law*. Toronto: Irwin Law, pp. 480-516, and at [http://www.irwinlaw.com/PublicInterest/three\\_3\\_lametti.htm](http://www.irwinlaw.com/PublicInterest/three_3_lametti.htm), accessed 2 July 2008.

8. *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 SCC 13, [www.canlii.org/ca/cas/scc/2004/2004scc13.html](http://www.canlii.org/ca/cas/scc/2004/2004scc13.html), accessed 2 July 2008.

9. M. Geist, 2005. "Canadian copyright bill: A missed opportunity," *Toronto Star* (27 June), and at [http://www.michaelgeist.ca/resc/html\\_bkup/june272005.html](http://www.michaelgeist.ca/resc/html_bkup/june272005.html), accessed 2 July 2008.

10. M. Geist, 2005. "Canada rejects one-sided approach to copyright reform," *Toronto Star* (28 March), and at [http://www.michaelgeist.ca/resc/html\\_bkup/mar282005.html](http://www.michaelgeist.ca/resc/html_bkup/mar282005.html), accessed 2 July 2008.

11. L. Murray, 2005. "Copyright talk: Patterns and pitfalls in Canadian policy discourses," In: Michael Geist (editor). *In the public interest: The future of Canadian copyright law*. Toronto: Irwin Law, pp. 480–516, and at [http://www.irwinlaw.com/PublicInterest/one\\_1\\_murray.htm](http://www.irwinlaw.com/PublicInterest/one_1_murray.htm), accessed 2 July 2008.

12. "Copyright and Digital Distance Education and Related Laws Contained in Title 17 of the United States Code," Circular 92, at <http://www.copyright.gov/title17/circ92.pdf>, accessed 2 July 2008.

13. D. Gervais, 2005. "Canadian copyright law post-CCH," *Intellectual Property Journal*, volume 18, number 2, pp. 131–167.

14. Industry Canada, 2005. "Government of Canada Announces Upcoming Amendments to the Copyright Act," at [www.ic.gc.ca/cmb/welcomeic.nsf/0/85256a5d006b972085256fcd0078718c](http://www.ic.gc.ca/cmb/welcomeic.nsf/0/85256a5d006b972085256fcd0078718c), accessed 2 July 2008.

15. U.S. Copyright Office, 1999. "Report on copyright and digital distance education" (May), at [http://www.copyright.gov/reports/de\\_rprt.pdf](http://www.copyright.gov/reports/de_rprt.pdf), accessed 2 July 2008.

16. B.L. Mann, 2006. "Action research with Internet database tools," In: B.L. Mann (editor). *Selected styles in Web-based educational research*. Hershey, Pa.: Idea Group, pp. 179–187.

17. B.L. Mann, 2000. "Phase theory: A teleological taxonomy of Web course management," In: B.L. Mann (editor). *Perspectives in Web course management*. Toronto: Canadian Scholar's Press, pp. 3–25.

18. V. Withers, 1992. "Computer literacy: Are we heading for a crisis?" Keynote address, *Proceedings of the First Post-Secondary CAL/CMI Conference*, Memorial University of Newfoundland.

19. "Education indicators in Canada: Report of the Pan-Canadian education indicators program 2007," Chapter D. Postsecondary education, <http://www.statcan.ca/english/freepub/81-582-XIE/2007001/high-en.htm#4>, accessed 2 July 2008.

20. Longdin, 2005.

21. "Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain copyright and related rights in the information society," at <http://eur-lex.europa.eu>, accessed 2 July 2008.

22. Excerpt from "University of British Columbia Faculty Association (Re: Dr. Mary Bryson and Master of Educational Technology) v. The University of British Columbia" (18 February 2004).

23. E. Townsend, 2003. "Legal and policy responses to the disappearing 'teacher exception' or copyright ownership in the 21st century university," *Minnesota Intellectual Property Review*, volume 209, pp. 209–283, and at <http://mipr.umn.edu/archive/v4n2/townsend.pdf>, accessed 2 July 2008.

24. P. Drahos with J. Braithwaite, 2002. *Information feudalism: who owns the knowledge economy?* London: Earthscan.

25. C. Waelde and L. Edwards, 2005. "Online intermediaries and liability for copyright infringement,"

26. T. Booth and J. Turk, 2000. "Ownership rights: The sale of online course content," *Canadian Association of University Teachers Bulletin*, volume 47, number 7, at <http://www.cautbulletin.ca/>, accessed 2 July 2008.

27. Longdin, 2005.

28. D. Noble, 2002. *Digital diploma mills: The automation of higher education*. Toronto: Between the Lines; see also D. Noble, 1998. "Digital diploma mills: The automation of higher education," *First Monday*, volume 3, number 1, at

[http://www.firstmonday.org/issues/issue3\\_1/noble/](http://www.firstmonday.org/issues/issue3_1/noble/), accessed 2 July 2008.

29. Co-operative Learning Object Exchange, at [http://learnware.uwaterloo.ca/projects/CCCO/cloe\\_stories.html](http://learnware.uwaterloo.ca/projects/CCCO/cloe_stories.html), accessed 2 July 2008.

30. MERLOT (Multimedia Educational Resources for Learning and Online Teaching), at <http://www.merlot.org/merlot/index.htm>, accessed 2 July 2008.

31. Memorial University of Newfoundland Faculty Association, 2007. "Distance education and learning technologies (DELT)" (2 November), <http://www.mun.ca/munfa/IB070814.pdf>, accessed 2 July 2008.

32. Association of University Teachers, 2002. "Online distance education: Principles for good practice," at [http://www.uvu.org.uk/media/html/9/b/ucu\\_autla7134\\_elearning\\_1.html](http://www.uvu.org.uk/media/html/9/b/ucu_autla7134_elearning_1.html), accessed 2 July 2008.

33. MacQueen, *et al.*, chapter 5.

34. R. Black, 2004. "Publish or be damned: The future of published science," BBC Radio (21 December), at <http://www.bbc.co.uk/radio4/science/publishorbedamned.shtml>, accessed 2 July 2008.

35. T. Scassa, 2005. "Interests in the balance," In: Michael Geist (editor). *In the public interest: The future of Canadian copyright law*. Toronto: Irwin Law, and at [http://www.irwinlaw.com/PublicInterest/one\\_2\\_scassa.htm](http://www.irwinlaw.com/PublicInterest/one_2_scassa.htm), accessed 2 July 2008.

36. B.L. Mann, 2007. "Coordinating programs since 1973: A personal history," Presentation to faculty, staff and students, St. John's, NL: Memorial University.

37. B.L. Mann, 2006. "Research on educational technology policy in the United States, Australia, Canada and the European Union," In: B.L. Mann (editor). *Selected styles in Web-based educational research*. Hershey, Pa.: Idea Group, pp. 12–36.

38. F. Cownie, 2004. *Legal academics: Culture and identities*. Oxford: Hart.

39. L. Coleburn and J. Spring, 2000. "Socrates unbound: Developmental perspectives on the law school experience," *Law & Psychology Review*, volume 24, number 5, p. 12.

40. V. Allen, 2007. 'A critical reflection on the methodology of teaching law to non-law students,' *Web Journal of Current Legal Issues*, at <http://webjcli.ncl.ac.uk/2007/issue4/allen4.html>, accessed 2 July 2008.

41. Plato, 1966. "The Meno," In: R.E. Allen (editor). *Greek philosophy: Thales to Aristotle*. New York: Free Press, pp. 108–110.

42. B.L. Mann, 2006. "Research on educational technology policy in the United States, Australia, Canada and the European Union."

43. C. Craig, 2005. "The changing face of fair dealing in Canadian copyright law: A proposal for legislative reform," In: Michael Geist (editor). *In the public interest: The future of Canadian copyright law*. Toronto: Irwin Law, and at [http://www.irwinlaw.com/PublicInterest/three\\_1\\_craig.htm](http://www.irwinlaw.com/PublicInterest/three_1_craig.htm), accessed 2 July 2008.

44. A. Sims, 2006. "The public interest defence in copyright law: Myth or reality?" *European Intellectual Property Review*, volume 28, number 6, pp. 335–343.

45. Craig, 2005.

46. "Copyright, Designs and Patents Act 1988," s 3A(2), at [http://www.opsi.gov.uk/acts/acts1988/UKpga\\_19880048\\_en\\_1.htm](http://www.opsi.gov.uk/acts/acts1988/UKpga_19880048_en_1.htm), accessed 2 July 2008.

47. MacQueen, *et al.*, chapter 2.

48. D. Lametti, 2005. "Coming to terms with copyright," In: Michael Geist (editor). *In the public interest: The future of Canadian copyright law*. Toronto: Irwin Law, and at [http://www.irwinlaw.com/PublicInterest/three\\_3\\_lametti.htm](http://www.irwinlaw.com/PublicInterest/three_3_lametti.htm), accessed 2 July 2008.

49. B.L. Mann, 1999. "Web course management," *Australian Educational Computing* volume 14, number 1, pp. 15–20. See also B.L. Mann, 2006. "Technology adoption and the Internet," In: B.L. Mann (editor). *Selected styles in Web-based educational research*. Hershey, Pa.: Idea Group, pp. 37–50.

50. "Copyright, Designs and Patents Act 1988," at [http://www.opsi.gov.uk/acts/acts1988/UKpga\\_19880048\\_en\\_1.htm](http://www.opsi.gov.uk/acts/acts1988/UKpga_19880048_en_1.htm), accessed 2 July 2008.
51. B.L. Mann, 1999. "Web course management in higher education," *Bulletin of the Canadian Society for the Study of Higher Education*, volume 14, pp. 7–11.
52. MTV Networks On Campus Inc., 2007. "Darfur is dying," at <http://www.darfurisdying.com/>, accessed 2 July 2008.
53. *Nature*, 2007. "Virtual surgery could soon be a reality" (29 March), at [http://www.nature.com/clinicalpractice/whats\\_new/20070329a.html](http://www.nature.com/clinicalpractice/whats_new/20070329a.html), accessed 2 July 2008.
54. D. Hunter and F.G. Lastowka, 2003. "To kill an avatar," *Legal Affairs*, at [http://www.legalaffairs.org/issues/July-August-2003/feature\\_hunter\\_julaug03.msp](http://www.legalaffairs.org/issues/July-August-2003/feature_hunter_julaug03.msp), accessed 2 July 2008.
55. A. Sims, 2006. "The public interest defence in copyright law: Myth or reality?" *European Intellectual Property Review*, volume 28, number 6, pp. 335–343.
56. C. Waelde, 2007. "Database copyright: the story of BHB," In: P. Torremans (editor). *Copyright law: A handbook of contemporary research*, London: Edward Elgar, pp 109-132.
57. "Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, Article 6," at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0009:EN:HTML>, accessed 2 July 2008.
58. Directive 96/9/EC, Article 2, *op. cit.*.
59. *Hyde Park Residence Ltd v Yelland* [1999] RPC 655; [2000] RPC 604 (CA).
60. *Ashdown v Telegraph Group Ltd* [2002], at <http://www.bailii.org/ew/cases/EWCA/Civ/2001/1142.html>, accessed 2 July 2008.
61. *University of British Columbia Faculty Association v. UBC* [2004] Dorsey, Q.C., at <http://www.canlii.org/>, accessed 2 July 2008.
62. *British Horseracing Board v William Hill Organization Ltd.*, at <http://www.bailii.org/ew/cases/EWCA/Civ/2001/1268.html>, accessed 2 July 2008.
63. Office of the Information and Privacy Commissioner, Report 2007–013, 2007 CanLII 47420 (NL I.P.C.), at <http://www.canlii.org/en/nl/nlipc/doc/2007/2007canlii47420/2007canlii47420.pdf>, accessed 2 July 2008.

## References

- V. Allen, 2007. 'A critical reflection on the methodology of teaching law to non-law students,' *Web Journal of Current Legal Issues*, at <http://webjcli.ncl.ac.uk/2007/issue4/allen4.html>, accessed 2 July 2008.
- Association of University Teachers, 2002. "Online distance education: Principles for good practice," at [http://www.ucu.org.uk/media/html/9/b/ucu\\_autla7134\\_elearning\\_1.html](http://www.ucu.org.uk/media/html/9/b/ucu_autla7134_elearning_1.html), accessed 2 July 2008.
- R. Black, 2004. "Publish or be damned: The future of published science," BBC Radio (21 December), at <http://www.bbc.co.uk/radio4/science/publishorbedamned.shtml>, accessed 2 July 2008.
- T. Booth and J. Turk, 2000. "Ownership rights: The sale of online course content," *Canadian Association of University Teachers Bulletin*, volume 47, number 7, at <http://www.cautbulletin.ca/>, accessed 2 July 2008.
- J. Boyle, 2006. "Seven ways to ruin a technological revolution" (18 December), at <http://video.google.com/videoplay?docid=-8538240380002213699>, accessed 2 July 2008.
- CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 SCC 13, [www.canlii.org/ca/cas/scc/2004/2004scc13.html](http://www.canlii.org/ca/cas/scc/2004/2004scc13.html), accessed 2 July 2008.

L. Coleburn and J. Spring, 2000. "Socrates unbound: Developmental perspectives on the law school experience," *Law & Psychology Review*, volume 24, number 5, p. 12.

Co-operative Learning Object Exchange, at [http://learnware.uwaterloo.ca/projects/CCCO/cloe\\_stories.html](http://learnware.uwaterloo.ca/projects/CCCO/cloe_stories.html), accessed 2 July 2008.

"Copyright and Digital Distance Education and Related Laws Contained in Title 17 of the United States Code," Circular 92, at <http://www.copyright.gov/title17/circ92.pdf>, accessed 2 July 2008.

"Copyright, Designs and Patents Act 1988," s 3A(2), at [http://www.opsi.gov.uk/acts/acts1988/UKpga\\_19880048\\_en\\_1.htm](http://www.opsi.gov.uk/acts/acts1988/UKpga_19880048_en_1.htm), accessed 2 July 2008.

F. Cownie, 2004. *Legal academics: Culture and identities*. Oxford: Hart.

C. Craig, 2005. "The changing face of fair dealing in Canadian copyright law: A proposal for legislative reform," In: Michael Geist (editor). *In the public interest: The future of Canadian copyright law*. Toronto: Irwin Law, and at [http://www.irwinlaw.com/PublicInterest/three\\_1\\_craig.htm](http://www.irwinlaw.com/PublicInterest/three_1_craig.htm), accessed 2 July 2008.

"Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain copyright and related rights in the information society," at <http://eur-lex.europa.eu>, accessed 2 July 2008.

P. Drahos with J. Braithwaite, 2002. *Information feudalism: who owns the knowledge economy?* London: Earthscan.

"Education indicators in Canada: Report of the Pan-Canadian education indicators program 2007," Chapter D. Postsecondary education, <http://www.statcan.ca/english/freepub/81-582-XIE/2007001/high-en.htm#4>, accessed 2 July 2008.

M. Geist, 2005. "Canadian copyright bill: A missed opportunity," *Toronto Star* (27 June), and at [http://www.michaelgeist.ca/resc/html\\_bkup/june272005.html](http://www.michaelgeist.ca/resc/html_bkup/june272005.html), accessed 2 July 2008.

M. Geist, 2005. "Canada rejects one-sided approach to copyright reform," *Toronto Star* (28 March), and at [http://www.michaelgeist.ca/resc/html\\_bkup/mar282005.html](http://www.michaelgeist.ca/resc/html_bkup/mar282005.html), accessed 2 July 2008.

"Geneva Declaration on the Future of the World Intellectual Property Organization," at <http://www.cptech.org/ip/wipo/genevadeclaration.html>, accessed 2 July 2008.

D. Gervais, 2005. "Canadian copyright law post-CCH," *Intellectual Property Journal*, volume 18, number 2, pp. 131-167.

D. Hunter and F.G. Lastowka, 2003. "To kill an avatar," *Legal Affairs*, at [http://www.legalaffairs.org/issues/July-August-2003/feature\\_hunter\\_julaug03.msp](http://www.legalaffairs.org/issues/July-August-2003/feature_hunter_julaug03.msp), accessed 2 July 2008.

Industry Canada, 2005. "Government of Canada Announces Upcoming Amendments to the Copyright Act," at [www.ic.gc.ca/cmb/welcomeic.nsf/0/85256a5d006b972085256fcd0078718c](http://www.ic.gc.ca/cmb/welcomeic.nsf/0/85256a5d006b972085256fcd0078718c), accessed 2 July 2008.

D. Lametti, 2005. "Coming to terms with copyright," In: Michael Geist (editor). *In the public interest: The future of Canadian copyright law*. Toronto: Irwin Law, pp. 480-516, and at [http://www.irwinlaw.com/PublicInterest/three\\_3\\_lametti.htm](http://www.irwinlaw.com/PublicInterest/three_3_lametti.htm), accessed 2 July 2008.

L. Longdin, 2005. "Collaborative authorship of distance learning materials: Cross-border copyright and moral rights problems," *European Intellectual Property Review*, volume 27, number 1, pp. 4-10.

H. MacQueen, C. Waelde, and G. Laurie, 2007. *Contemporary intellectual property: Law and policy*. Oxford: Oxford University Press.

B.L. Mann, 2007. "Coordinating programs since 1973: A personal history," Presentation to faculty, staff and students, St. John's, NL: Memorial University.

B.L. Mann, 2006. "Research on educational technology policy in the United States, Australia, Canada and the European Union," In: B.L. Mann (editor). *Selected styles in Web-based educational research*. Hershey, Pa.: Idea Group, pp. 12-36.

- B.L. Mann, 2006. "Technology adoption and the Internet," In: B.L. Mann (editor). *Selected styles in Web-based educational research*. Hershey, Pa.: Idea Group, pp. 37–50
- B.L. Mann, 2006. "Action research with Internet database tools," In: B.L. Mann (editor). *Selected styles in Web-based educational research*. Hershey, Pa.: Idea Group, pp. 179–187.
- B.L. Mann, 2000. "Phase theory: A teleological taxonomy of Web course management," In: B.L. Mann (editor). *Perspectives in Web course management*. Toronto: Canadian Scholar's Press, pp. 3–25.
- B.L. Mann, 1999. "Web course management in higher education," *Bulletin of the Canadian Society for the Study of Higher Education*, volume 14, pp. 7–11.
- B.L. Mann, 1999. "Web course management," *Australian Educational Computing* volume 14, number 1, pp. 15–20.
- Memorial University of Newfoundland Faculty Association, 2007. "Distance education and learning technologies (DELT)" (2 November), <http://www.mun.ca/munfa/IB070814.pdf>, accessed 2 July 2008.
- MERLOT (Multimedia Educational Resources for Learning and Online Teaching), at <http://www.merlot.org/merlot/index.htm>, accessed 2 July 2008.
- MTV Networks On Campus Inc., 2007. "Darfur is dying," at <http://www.darfurisdying.com/>, accessed 2 July 2008.
- L. Murray, 2005. "Copyright talk: Patterns and pitfalls in Canadian policy discourses," In: Michael Geist (editor). *In the public interest: The future of Canadian copyright law*. Toronto: Irwin Law, pp. 480–516, and at [http://www.irwinlaw.com/PublicInterest/one\\_1\\_murray.htm](http://www.irwinlaw.com/PublicInterest/one_1_murray.htm), accessed 2 July 2008.
- Nature*, 2007. "Virtual surgery could soon be a reality" (29 March), at [http://www.nature.com/clinicalpractice/whats\\_new/20070329a.html](http://www.nature.com/clinicalpractice/whats_new/20070329a.html), accessed 2 July 2008.
- D. Noble, 2002. *Digital diploma mills: The automation of higher education*. Toronto: Between the Lines.
- D. Noble, 1998. "Digital diploma mills: The automation of higher education," *First Monday*, volume 3, number 1, at [http://www.firstmonday.org/issues/issue3\\_1/noble/](http://www.firstmonday.org/issues/issue3_1/noble/), accessed 2 July 2008.
- Office of the High Commissioner for Human Rights, "International Covenant on Economic, Social and Cultural Rights," Article 13 2(c), at [http://www.unhcr.ch/html/menu3/b/a\\_cescr.htm](http://www.unhcr.ch/html/menu3/b/a_cescr.htm), accessed 2 July 2008.
- Plato, 1966. "The Meno," In: R.E. Allen (editor). *Greek philosophy: Thales to Aristotle*. New York: Free Press, pp. 108–110.
- T. Scassa, 2005. "Interests in the balance," In: Michael Geist (editor). *In the public interest: The future of Canadian copyright law*. Toronto: Irwin Law, and at [http://www.irwinlaw.com/PublicInterest/one\\_2\\_scassa.htm](http://www.irwinlaw.com/PublicInterest/one_2_scassa.htm), accessed 2 July 2008.
- A. Sims, 2006. "The public interest defence in copyright law: Myth or reality?" *European Intellectual Property Review*, volume 28, number 6, pp. 335–343.
- E. Townsend, 2003. "Legal and policy responses to the disappearing 'teacher exception' or copyright ownership in the 21st century university," *Minnesota Intellectual Property Review*, volume 209, pp. 209–283, and at <http://mipr.umn.edu/archive/v4n2/townsend.pdf>, accessed 2 July 2008.
- United Nations, "Universal Declaration of Human Rights," Article 26 (1)(2), at <http://www.un.org/Overview/rights.html>, accessed 2 July 2008.
- University of British Columbia Faculty Association v. UBC* [2004] Dorsey, Q.C., at <http://www.canlii.org>, accessed 2 July 2008.
- C. Waelde and L. Edwards, 2005. "Online intermediaries and liability for copyright infringement," World Intellectual Property Organization Seminar on Copyright and Internet Intermediaries (13 April).
- V. Withers, 1992. "Computer literacy: Are we heading for a crisis?" Keynote address,

## Editorial history

Paper received 19 January 2008; accepted 25 May 2008.

---

Copyright © 2008, *First Monday*.

Copyright © 2008, Bruce L. Mann.

Copyright protection and the new stakeholders in online distance education: The Play's the Thing

by Bruce L. Mann

*First Monday*, Volume 13, Number 7 - 7 July 2008

<http://www.uic.edu/htbin/cgiwrap/bin/ojs/index.php/fm/article/viewArticle/2095/1997>