

Increasing Librarian Confidence and Comprehension in a Fair Use Training Session

Sara R. Benson

abstract: The results of this study illustrate that one-shot training sessions are effective in aiding librarians in academic libraries to engage with fair use. This study used testing both before and after an expert-led three-hour training session on fair use for academic librarians to measure their confidence and comprehension. The results, though limited in scope, provide encouraging evidence that appropriate training, even for a limited time, can help library professionals improve their knowledge of fair use.¹ The level of confidence and comprehension rose after the academic librarian participants were provided with the three-hour fair use training. The survey results collected two weeks after the training demonstrated that some librarians had an opportunity to use the skills learned in the training in their daily work. Because fair use is frequent in the everyday experience of academic librarians, additional training for librarians through their employment is recommended. Although it would be ideal to have an expert lead such training, a ready-made curriculum would also be a useful tool for academic libraries wishing to engage in educational practices with copyright.

Introduction

Librarians often enter practice without extensive training on copyright and fair use.² This omission is significant because, in a modern library, librarians frequently face fair use questions. Such questions come not only from patrons, for whom librarians can provide access to legal information but not legal advice, but also from other areas of a librarian's daily work. On any given day, a librarian might need to make fair use assessments to create a library display, poster, or bookmark. That same librarian might encounter questions about fair use when using images in an online library guide or when engaging in digital scholarship initiatives and other projects with scholars on

portal: Libraries and the Academy, Vol. 18, No. 4 (2018), pp. 781–804.

Copyright © 2018 by Johns Hopkins University Press, Baltimore, MD 21218.



campus. All these scenarios involve questions of fair use, and only the one involving direct patron involvement prohibits the librarian from making a fair use determination due to the librarian's status as an information gatherer and not a lawyer. Nonetheless, a librarian's competency in fair use can assist the librarian in helping a patron to understand and evaluate fair use on his or her own.

To fill this need, libraries can implement successful fair use training sessions for their own employees and effectively address fair use issues both within the library itself and those posed by library patrons. Some training programs, including Copyright First Responders, have already been developed to help librarians tackle fair use and other copyright issues. This study was developed to test whether a complicated legal subject such as fair use could be adequately covered in a short, one-shot workshop to improve librarians' comprehension and confidence. This study, grounded in information literacy and assessment literature, will add to the discipline of library and information science (LIS) by analyzing how effectively a one-shot fair use training session can increase confidence and comprehension levels of librarians. Though limited in scope, this study provides evidence of a correlation between a librarian's participation in a three-hour training session and the librarian's confidence and comprehension levels post-training. The results, therefore, are encouraging and may lead to further development and implementation of training programs regarding fair use and other copyright issues in libraries.

Fair Use and Academic Libraries

In an age when copyright is pervasive in the everyday life of librarians, it is important to assess whether fair use training is effective when provided to academic librarians and graduate assistants providing reference services. Adequate training would allow them to conduct their day-to-day operations with more confidence and comprehension. Fair use is delineated in Section 107 of the Copyright Act of 1976. In the statute, Congress noted that four factors must be considered to determine whether fair use applies: "(1) the purpose and character of the use . . . ; (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 on the potential market for or value of the copyrighted work."³ Additionally, the Supreme Court of the United States stated that fair use also encompasses transformative uses of works. In *Campbell v. Acuff-Rose Music, Inc.*,⁴ the Supreme Court explained that a transformative work is a new work that "adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message."⁵ Since the *Campbell* case in 1994, transformative fair use cases have proliferated, and court discussions have added to our collective understanding of how a transformative work impacts the four-factor test. The Supreme Court's guidance, explaining that the more transformative a work is, the less the commercial aspect of the work will weigh against fair use⁶ has been supported by cases like that of Google Books.⁷ Transformative fair use has also been extended to instances other than parody where the author of the new work "adds something new" to the original work, but without commenting on the original work in any obvious way.⁸

Fair use, even among judges,⁹ is often viewed as difficult, fluctuating, and a troublesome area of the law despite its codification in Section 107 of the Copyright Act.¹⁰ The



challenges surrounding fair use may cause some librarians to avoid the subject altogether.¹¹ In a 2017 study in the United Kingdom investigating the phenomenological responses to copyright inquiries in libraries,¹² one librarian responded, “For non-copyright queries the answer is yes or no . . . For copyright queries the actual answer is maybe, maybe—and that is why it is different—you can’t give them the answer they want.”¹³ This response indicates both the complexity of the copyright questions librarians face as well as the frustration that many librarians, including copyright librarians, struggle with when walking the line between providing copyright information, which is appropriate, and copyright legal advice, which is not.¹⁴

Academic librarians engage with fair use frequently in their own work when creating a library exhibit, drafting an online library guide, or presenting a slide show or poster at a conference. Academic librarians also engage, as copyright librarians do, by providing information about fair use, as well as directing patrons to appropriate resources, such as copyright checklists. As with any reference interview, an academic librarian’s strong knowledge of the subject matter will yield more helpful results to the patron. Thus, a librarian trained in fair use will provide better service to patrons.

Academic librarians engage with fair use frequently in their own work when creating a library exhibit, drafting an online library guide, or presenting a slide show or poster at a conference.

Literature Review

The most relevant articles to date regarding librarian training on copyright are limited to a national survey aimed at discovering whether librarians received copyright training¹⁵ and a national self-assessment report (born from an international survey) from librarians regarding copyright knowledge.¹⁶ No one has assessed whether training (in some capacity) can increase the confidence of librarians in answering user questions about copyright law. The self-assessment survey noted that the respondents preferred “face-to-face, in person, and hands-on opportunities such as workshops,”¹⁷ which is how the training in this study is designed.

The study on copyright law and training closest to the one at hand was published in 2011 by Nancy Sims as part of an Association of College and Research Libraries (ACRL) Conference.¹⁸ The study surveyed a sample of 73 University of Minnesota faculty, instructors, researchers, and librarian employees. Sims sought to test the knowledge of university employees regarding copyright and fair use.¹⁹ She included measures of self-reported history, knowledge, and training, as well as a self-assessed measure of general copyright knowledge.²⁰ To measure fair use knowledge, Sims used three situational questions. Participants were provided with a scenario involving either a textual quotation, an image used in a conference slide or poster, or a course resource (e-reserve) posting,²¹ and were asked to select one or more of 10 possible considerations that they deemed relevant to the analysis.²²

Analyzing the responses, Sims found that “on all three of the fair use questions, respondents managed to identify less than half of the considerations directly related to



the statutory fair use factors." She added, "Most of the time, library employees slightly outperformed faculty, catching more correct considerations, missing fewer of them."²³ She also noted that library employees outperformed faculty members in the "transformative use" factors of fair use as well but that "less than half [of] library employees were familiar with the criticism/commentary considerations of transformative use."²⁴

Sims's study was the first of its kind to substantially measure librarian fair use knowledge. The current study builds on that work by measuring not only the fair use knowledge of librarians but also their comprehension after a short, expert-provided training session on the subject. The qualitative nature of the pretest and posttest results adds an additional measure of reliability to the results because the participants were

asked to write out their answers to the fair use scenario, rather than to check a list of possible options.

The current study measures the impact of one-shot training on fair use. Measuring the impact of this kind of training is essential due to the findings of a 2015 national survey of librarians which found that 80 percent of the respondents "received no copyright/IP-specific, on-the-job training when

... LIS programs do not prepare librarians for their encounters with copyright law in the workplace.

they started working in libraries."²⁵ The same study indicated that such training is in demand because LIS programs do not prepare librarians for their encounters with copyright law in the workplace.²⁶

The legal community often describes fair use as so complicated that it lacks any definition.²⁷ And, due to the complex nature of the topic, law schools often teach fair use over the course of many class sessions. Many law professors use three class sessions (along with reading assignments) to adequately discuss the concept.²⁸

However, a lack of understanding of fair use is harmful to the LIS community because librarians often interact with patrons who have fair use questions. Thus, training in fair use is essential, and raising the level of confidence and comprehension of librarians for answering fair use questions is crucial. The question remains, however, whether a one-shot training session is a suitable mechanism to provide training to academic librarians when the subject typically receives much longer treatment in the law school curriculum.

Fair use training does occur in libraries and has been documented in the LIS literature.²⁹ What has not been well documented are the outcomes, in terms of both learning measurements and level of confidence, of a one-shot training session. For this study, the methodology includes both an objective measure (pretesting and posttesting) as well as a subjective measure of confidence levels. Simply measuring confidence levels alone

can be misleading.³⁰ Some individuals may overstate their confidence level regarding a skill while underperforming in a skill set, and the reverse is also possible.³¹ Therefore, the design for this measure-

Fair use training furthers the information literacy goals acknowledged as essential to academic librarianship by ACRL.

ment includes both a confidence level measurement as well as a more objective testing of comprehension.



The current information literacy standard governing librarian teaching is the ACRL “Framework for Information Literacy for Higher Education.”³² ACRL, through its frame “Information Has Value,” recognizes that librarians should be able to “articulate the purpose and distinguishing characteristics of copyright [and] fair use.”³³ Fair use training furthers the information literacy goals acknowledged as essential to academic librarianship by ACRL.³⁴

Research Hypothesis and Methodology

The study set out to test this research hypothesis: A single, three-hour expert-led training session is sufficient to increase librarians’ confidence and comprehension of fair use. This experiment used nonequivalent control group design, in which the participants were not randomly assigned to groups, and so the groups were “nonequivalent.”³⁵ The researcher engaged in a mixed-methods study of user confidence and knowledge both before and after a training session. The session was led by a subject expert, Kyle Courtney of Harvard Library in Cambridge, Massachusetts, who used a portion of the Copyright First Responders curriculum.³⁶ The subjects of the study were both reference librarians and graduate assistants serving in a reference capacity in the University Library system of the University of Illinois at Urbana-Champaign. Participating in the study was entirely voluntary, in accordance with the Institutional Review Board protocol. The researcher obtained a purposive sample, making a deliberate effort to include typical members of both new and more seasoned groups of librarians, including graduate assistants.³⁷

Pretest

The pretest consisted of general demographic questions as well as questions regarding whether the participants had previous copyright training. The pretest asked participants to disclose how much training (and the type of training) they had in advance of the instruction session. The pretest also asked the participant to express how much he or she agreed with the statement “I am confident providing advice to library users regarding fair use” on a Likert scale.³⁸ In addition, the pretest presented the participant with a hypothetical fair use scenario that might be encountered during a library reference meeting (see Appendix B). The pretest asked participants to analyze the fair use factors (listing the factors by name) and to determine whether the use in question would likely be considered a fair use. The researcher devised the hypothetical questions for the pretest and posttest, while the rubric was developed by a national group of experts on fair use. The pretest and posttest hypothetical questions were designed to permit test subjects to both utilize the four fair use factors as well as the transformative use test developed by the courts.

The preface to the hypothetical scenario asked participants to answer a hypothetical fair use situation as they might respond to a library patron by assessing the fair use scenario and explaining the analysis they “would conduct with the user,” including “the legal considerations . . . [and] the factual ones as well.” Orally, the researcher explained that, of course, librarians are not permitted to provide library patrons with legal advice. In practice, the participants would likely refer the patron to a library guide, fair use checklists, and other information.³⁹ To assess their level of comprehension, participants



were asked to conduct the fair use analysis and evaluate whether the hypothetical use would constitute a fair use.

Training

A subject expert, Harvard copyright librarian Kyle Courtney, provided in-person training. Multiple three-hour training sessions, including pretesting and posttesting, were offered. Participants in the experimental group of the study attended one three-hour training session on fair use, while members of the control group did not.

Courtney employed a modified portion of his “Copyright First Responders” curriculum⁴⁰ to provide fair use training to the participants. The session began with a brief lecture on basic copyright information—such as the formation of copyright, the length of copyright, and the rights a copyright holder has. Courtney then described the right to fair use, using a comic strip to illustrate the very first fair use case (*Folsom v. Marsh*), an 1841 case involving a two-volume abridgement of a biography of George Washington.⁴¹ While the court found that the abridgment was not a fair use in that case, *Folsom v. Marsh* is widely accepted as giving birth to the fair use doctrine in American law by setting forth the four factors that are currently protected in the Copyright Act. Courtney spent some time explaining why fair use is a right, pointing to Section 108(f)(4) of the act, which specifically refers to fair use as a “right.”⁴² He explained the traditional four-factor test for fair use provided in Section 107 of the Copyright Act and had participants read and discuss a legal opinion analyzing the four factors so that they had an idea how judges view the factors. Finally, Courtney defined transformative fair use and explained how courts generally apply the transformative test through a modified version of the inquiry developed by Kevin Smith and Lisa Macklin:

1. “Does the Copyrighted Material help me make my new point?” and
2. “Have I used no more than is necessary to make my point? (Is it ‘just right’?)”⁴³

Posttest

Participants then took a posttest with a slightly different fair use hypothetical question to assess their comprehension of the “criticizes or comments” aspect of fair use. The participants were again asked to write out their analysis of the fair use factors and to determine whether the use in question would likely be considered fair. Finally, participants were asked how confident they felt to answer a library reference question about fair use and to explain their answer to the patron (on a similar scale to that provided earlier).

Approximately two weeks after the training session, a follow-up questionnaire was sent to the training participants. In the follow-up survey, the participants were asked whether, in the intervening time between the training and the questionnaire, they had the opportunity to answer a fair use question of any kind. If so, they were asked to describe the interaction and how they felt about it—that is, whether they felt confident in answering the question and guiding the library patron to find information.

The control group was composed of librarians and graduate students who could not attend the expert training session. The control group took the pretest and posttest without the workshop in-between and did not participate in the follow-up second post-test questionnaire.



All hypothetical qualitative testing results were randomly sorted with no participant identifying information. The author scored the results using an expert-developed rubric, which articulated the expectations for the assignment using a list of criteria and ranking how the participant met the expectations, ranging from poor to excellent.⁴⁴

Rubric Development

A rubric was chosen as the appropriate instrument to measure comprehension of fair use because rubrics measure “higher order thinking skills rather than simply measuring an acquisition of facts.”⁴⁵ The rubric was developed using a panel of copyright experts who communicated through a shared document online. The group of experts was not anonymous, and an open discussion allowed the group to reflect on one another’s guidance to develop the rubric. The development was an iterative process, with various versions produced to incorporate feedback informed by the expert contributions. Typically, the language used is the most challenging part of designing a scoring rubric.⁴⁶ Thus, working with a group of subject experts to form a consensus provides an evaluative validity to the phrasing used.⁴⁷ This approach can be categorized as a panel process to build a consensus of expert opinions.

The copyright librarian experts were identified by consulting a list of copyright specialists in academic libraries. The individuals who collaborated on the project consisted of Brandon Butler, Kyle Courtney, Ana Enriquez, and the author. All four experts have law school teaching experience and are familiar with the writing and scoring of law school student responses and examinations. Additionally, the experts all currently focus on copyright legal issues in their professional library careers.

The experts collaborated regarding the appropriate performance descriptors in each category of comprehension. They quickly agreed that the test question should be worded to allow for multiple interpretations rather than an obvious result because many fair use questions are not clear-cut and can be interpreted in various reasonable ways. The rubric allowed the author to rank pretest and posttest answers to the hypotheticals from 0 to 4, with 0 being a nonanswer such as “I don’t know,” 1 reflecting a shallow grasp of fair use, and 4 indicating the most complete understanding of fair use.

... many fair use questions are not clear-cut and can be interpreted in various reasonable ways.

Results

Thirty-nine librarians and library students (working as graduate assistants in the library) completed the pretest and posttest, as well as the fair use training.⁴⁸

Sixteen people participated in the control group, which completed only the pretest and posttest with no training. Of the 39 participants in the training and testing, 38 participated in the second posttest two weeks later. Where results meet a *t*-test for statistical significance ($\alpha = 0.05$),⁴⁹ those findings may be noted, but the population sample was not random.



Experimental Group Data

Participants were asked whether they had received “formal” training in copyright law before the workshop and how much and whether they had received such training in fair use specifically prior to the workshop. Table 1 shows their responses.

Interpreting these data is difficult because it seems unorthodox to receive copyright law training with no mention of fair use. However, such training could occur, such as instruction focused on the library exceptions to copyright provided in Section 108 of the Copyright Act. Similarly, training that covered only fair use would be understandable in the context of fair use week events. While a more open-ended question asked for a description of the training provided, the responses varied greatly in the level of detail. Thus, it was hard to make conclusions based on this portion of the data, other than to suggest that approximately half the participants had some prior knowledge of copyright law, fair use, or both. These data seem to align with a national survey of librarians indicating that about 55 percent of the respondents with an MLS degree reported that “at least one class they took while pursuing their degree addressed copyright/ [intellectual property] IP.”⁵⁰

Participants were asked to list the name or type of course providing them with previous information about copyright law, with the option to select a box indicating whether fair use was a component of the training. One respondent specifically mentioned a required course from the iSchool at the University of Illinois called Libraries, Information and Society (LIS 502), which included a brief copyright component. Others listed such courses as Introduction to Intellectual Property (one participant), Copyright for Information Professionals / Librarians (two participants), Copyright and Contracts (one participant), Music Copyright (two participants), a project for a general library information course (one participant), and Copyright and Institutional Sound Recordings (one participant). Three participants listed library workshops, and one participant could not remember where he or she had received prior training. Almost all the prior copyright law training had a fair use component—only 2 of 23 did not. Seventeen participants indicated that they answer a question related to fair use in the library one to two times per week, while 22 individuals responded that they never answer such questions as part of their role in the library.

Confidence Levels Pre- and Post-Training

The participants who took the fair use training were asked for their confidence levels both in the pretest and the posttest. In the pretest, participants were asked:

Question 1: “Currently, how much do you know about fair use copyright law?”

Question 2: “Currently, how well are you able to explain fair use copyright law to a colleague?”

Question 3: “If a patron asked you a fair use copyright question, how confident are you that you could assist the patron?”

Question 4: “How much help would you be able to give to a patron who has a difficult question about fair use copyright law?”

The participants were again asked the same questions about their confidence levels in the posttest immediately after the three-hour fair use training session. Regarding the first question, how much they currently know about fair use copyright law, confidence levels rose. A similar gain in confidence was indicated by the answers to the second



Table 1.

Summary of prior training (N = total number of respondents)

Copyright law training	Fair use training	Fair use only	Copyright law only	Both	Neither
N = 38 14 (36.2%)	N = 39 17 (43.6%)	N = 38 5 (13.2%)	N = 38 2 (5.3%)	N = 38 12 (31.6%)	N = 39 19 (50%)

question about how well they could explain fair use copyright law to a colleague. The responses to the question of confidence in assisting a patron with a fair use copyright question indicated a rise in confidence post-training as well. Finally, when asked whether they could assist a patron with a difficult fair use copyright question, confidence levels continued the upward trend.

The gap in results is significant for each of the four levels of confidence measured on a *t*-test scale and is best viewed visually. Figure 1 indicates the mean level of pre- and post-training confidence levels from each measurement indicator. See Figure 1.

The gap in levels can also be seen in Table 2, which compares the Likert scale responses to the pretest and posttest confidence questions. See Table 2.

Comprehension Levels Pre- and Post-Training

The mean scores from the rubric for the pretest and posttest were statistically significant as well. The principal investigator scored each pretest and posttest hypothetical answer against the expert-developed rubric on a scale of zero to four. A sample of the scoring appears in Appendix F. The results of the mean scores of the pretest (before the training) were 1.31 out of 4.0. After training, the result increased to a mean score of 2.69 out of 4.0.

The score difference between the pretest and posttest was slightly more pronounced for individuals who had never received formal copyright fair use training. Those individuals had an increase in their rubric score of 1.82, while those with some previous training had an increase in scores of just 0.83. Similarly, the increase in confidence levels of those who had no training was greater than those who had training before. Figure 2 demonstrates these differences in comprehension visually.

Control Group Results

There were 16 participants in the control group. The control group confidence levels and comprehension levels (as measured by scores on the pretest and posttest hypothetical answers) did not indicate a significant change. Regarding the confidence levels pretest and posttest, with no training in the interim, the pretest mean for question 1 was 2.63, with the posttest mean at 2.53. For question 2, the pretest mean was 2.50, and the posttest was 2.44. For question 3, the pretest mean was 2.56, and the posttest mean was 2.44. For question 4, the pretest mean was 1.88, and the posttest mean was the same, 1.88. Going



Table 2.
Likert scale responses to pretest and posttest confidence questions

Question 1: "Currently, how much do you know about fair use copyright law?"

Level	Nothing at all	A little	A moderate amount	A lot	A great deal
Pretest	2.6%	(23) 59%	(11) 28.2%	(4) 10.3%	0
Posttest	0	(2) 5.1%	(13) 33.3%	(22) 56.4%	(2) 5.1%

Question 2: "Currently, how well are you able to explain fair use copyright law to a colleague?"

Level	Not well at all	Slightly well	Moderately well	Very well	Extremely well
Pretest	(9) 23.1%	(17) 43.6%	(11) 28.2%	(2) 5.1%	0
Posttest	0	(6) 15.4%	(20) 51.3%	(13) 33.5%	0

Question 3: "If a patron asked you a fair use copyright question, how confident are you that you could assist the patron?"

Level	Not confident at all	Slightly confident	Somewhat confident	Very confident	Extremely confident
Pretest	(7) 17.9%	(14) 33.3%	(13) 35.9%	(4) 12.8%	0
Posttest	0	(3) 7.7%	(19) 48.7%	(16) 41%	(1) 2.6%

Question 4: "How much help would you be able to give to a patron who has a difficult question about fair use copyright law?"

Level	None at all	A little	A moderate amount	A lot	A great deal
Pretest	(14) 35.9%	(21) 53.8%	(3) 7.7%	(1) 2.6%	0
Posttest	0	(9) 23.1%	(23) 59%	(7) 18.9%	0

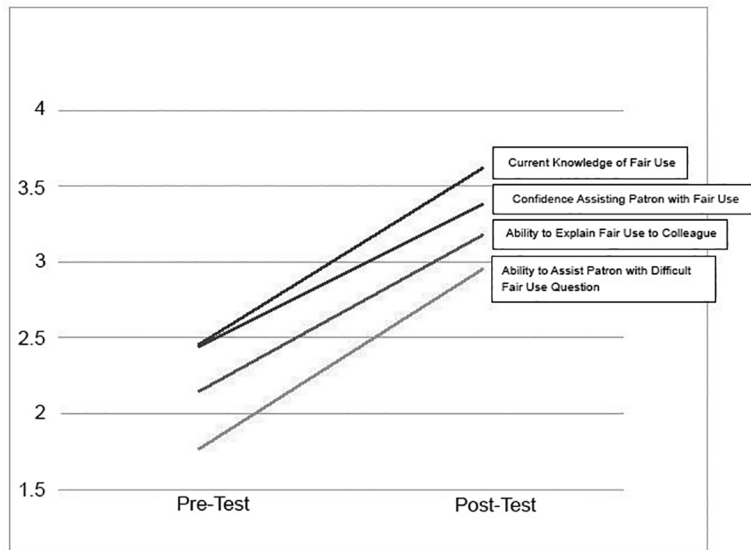


Figure 1. Participants' mean levels of self-assessed confidence increased across all categories.

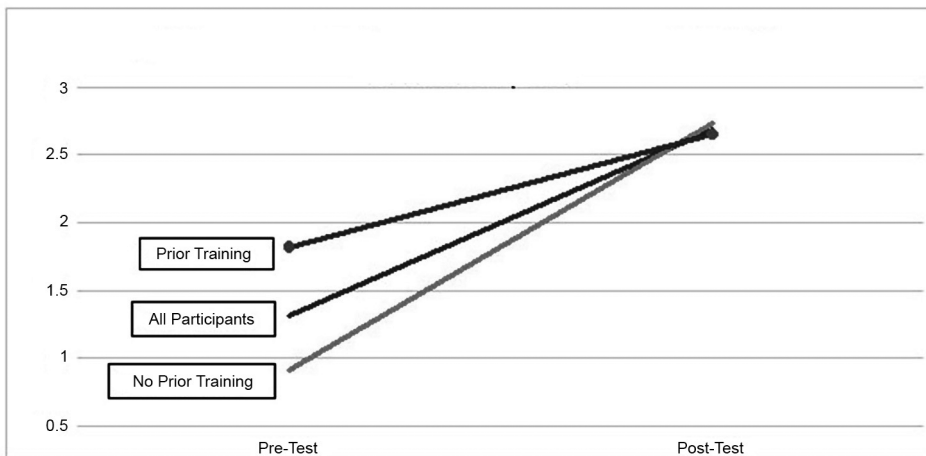


Figure 2. Mean scores on the comprehension rubric increased for all participants.



through the experience of answering the hypothetical questions seems to have made individuals more likely to slightly change their answers regarding confidence level, but not to a statistically significant margin. The mean pretest score for the comprehension level of the control group participants was 1.44, and the mean posttest score was 2.00, which is not statistically significant at $t = -1.95$.⁵¹

The results do not indicate that the confidence or comprehension of the control group participants increased between the pretest and the posttest with no training provided. Therefore, the following two conclusions can be inferred: (1) The confidence level measurements for the experimental group likely reflect a correlation to the training provided because the control group did not have a confidence level change; and (2) The pretest and posttest hypotheticals approximate the same level of challenge for participants because those with no training scored roughly the same on both the pretest and posttest.

Second Posttest Results

Only one participant from the earlier testing did not complete the second posttest two weeks after the initial training. The second posttest asked a shorter series of questions, mainly about the participants' confidence levels at that time, their feedback about the training, and whether they had the opportunity to use the training in practice.

Specifically, participants were asked, "Since the training in fair use copyright law . . . have you had an opportunity to answer a patron's question about fair use copyright, or have you not had such an opportunity?" Only three participants indicated that they had such an opportunity, while 35 reported that they had not. However, those three did indicate, when answering the next question about how helpful the training was to aid them in answering, that it was "very helpful." More participants, 12, had an opportunity to use the training in some other way in their work, while 26 did not.

Some of the most valuable information obtained from this portion of the testing were the open-ended qualitative responses to the question "Please describe how you were able to use the information from the fair use training in your work in any way (i.e., if you were able to answer a patron question, please indicate what the question was and how you were able to help the patron." Thirteen participants provided written responses to this question, elaborating how the training helped them in their work as librarians.

While six participants had more general responses, such as that they could "tell people" about fair use, "spread information," or use the information in "discussions about open access and fake news" or "Creative Commons," many had more specific uses to recount. For instance, three participants had directly applied the knowledge they gained about fair use to develop a scholarly presentation or library exhibit. Two participants noted that they used information from the training to help guide content in a "publishing workshop." Two participants recalled specific instances at the information desk when they could assist a library patron because of the fair use training.

Discussion

The sampling in this study was a purposive grouping; therefore, the results from the study are not generalizable. Despite that limitation, the findings are encouraging for copyright educators and librarians alike. Often, librarians harbor feelings that copyright and fair use are too difficult for them to engage with and, therefore, may avoid discussing the topic with patrons at all.⁵² Indeed, many librarians have not been sufficiently



trained in an information science program about copyright and fair use and could use additional instruction.⁵³

This study indicates that librarians feel more confident about their ability to address fair use questions after just a three-hour training session, and they are more competent at answering fair use questions as well. Unsurprisingly, the findings also indicate a higher jump in knowledge from the training when librarians had not previously engaged in such training. Thus, the data support both research hypotheses. Additionally, in the two weeks after the training, some study participants had the opportunity to apply the knowledge that they learned during the session.

...librarians feel more confident about their ability to address fair use questions after just a three-hour training session, and they are more competent at answering fair use questions as well.

While this study is limited to one type of fair use training, that offered by Courtney through the Copyright First Responders program, and to a limited number of study participants, the results are promising. They indicate that information science programs should offer more training in copyright and fair use to students to increase their confidence and comprehension. The results also suggest that it is worthwhile for libraries to invest time and money in fair use training for employees. Most importantly, the results indicate that, despite the complicated nature of fair use, librarians can improve their understanding and confidence, even in a short time, with adequate training and institutional support.

A few limitations of the study and areas for further inquiry should be noted. First, participants were asked whether they had previously engaged in any kind of “formal” copyright training and, then, whether they had engaged in any kind of “formal” fair use copyright training. Interestingly, fewer participants stated that they had been provided with copyright training than fair use training, which seems contradictory because *copyright training* is the broader term and *fair use* is the more specific term. Perhaps participants thought that *copyright training* meant a thorough training regarding all aspects of copyright law. It is hard to tell, given that there was no qualitative portion of that response. The question could have been phrased better as well because the term *formal* could use a definition. However, in their written responses to the question indicating when and where they had received formal fair use training in the past, participants listed classroom courses, webinars, and the like, which seem reasonable as compared to “informal” training such as watching a television show or discussing the topic with a colleague. The most notable (and perhaps interesting) conclusion to be drawn from the demographic data regarding prior training is that half of the experimental group participants had never received any sort of “formal” copyright or fair use training. This mirrors other researchers, who have noted that additional courses in iSchools as well as continuing education for librarians on the topic of copyright and fair use are sorely needed.⁵⁴

Finally, an area for further exploration is whether a similar jump in confidence and knowledge would occur after a training based on Section 108 of the Copyright Act—those provisions governing preservation, digitization, and interlibrary loan of materials. Section 108 is an area of copyright law that librarians, especially in archives, preservation, and digitization, employ almost daily. It may be instructive to develop and deploy a similar set of questions and a rubric for a Section 108 library training session.



Conclusion

The results of this study support the research hypotheses and provide some evidence to illustrate that one-shot fair use training sessions are effective in aiding librarians working in academic libraries. Such training fills a gap left in the LIS curricula and could be fulfilled by sessions throughout the year, including a session like the one reviewed in this study. Courtney's Copyright First Responders program is one option for libraries wishing to provide such training. This study indicates, however, that a ready-made curriculum divided into different sessions about copyright and libraries could be a welcome tool for libraries wishing to train their librarians about copyright issues. The author plans to create such a guide (in the form of a library guide) and will publish it soon as an ongoing project through the University of Illinois Library. This study might inspire other institutions to provide additional training to library faculty and staff to encourage them to engage with fair use in their daily work.

Acknowledgments

This article was originally submitted to fulfill the thesis requirement for the MSLIS degree at the iSchool at the University of Illinois. The author would like to thank Terry Weech for his assistance as her thesis adviser and Dan Tracy for serving as the second reader for her thesis.

Sara R. Benson is the copyright librarian and an assistant professor in the Scholarly Communication & Publishing Unit of the University Library of the University of Illinois at Urbana-Champaign; she may be reached by e-mail at: srbenson@illinois.edu.

Appendix A

Demographic and Confidence Level Survey Questions

Q1 Before you attended this session, did you ever receive any formal instruction in copyright law, or did you not?

- Received formal instruction in copyright law (1)
- Never received formal instruction in copyright law (2)

Q2 Fair use is a limitation on copyright law that allows someone to use a work that is currently protected by copyright without author permission.

Before you attended this session, did you ever receive any formal instruction in fair use copyright law, or did you not?

- Received formal instruction in fair use (1)
- Never received formal instruction in fair use (2)

Q3 You indicated that you have received formal instruction in copyright law before attending this session.

Below, please describe each formal instruction session in copyright law in terms of:



Please provide title of training or brief description (1)	How long was this session? <i>You can answer in terms of number of minutes OR number of days.</i>		Did it include any instruction on fair use, or did it not?	If fair use instruction was included, how long was the fair use instruction session? <i>Please provide your best estimate in terms of number of minutes.</i>
	Number of minutes (1)	Number of days (2)		
			Did include fair use training (1)	Did not include fair use training (2)
Training session #1 (1)			0	0
Training session #2 (2)			0	0
Training session #3 (3)			0	0
Training session #4 (4)			0	0
Training session #5 (5)			0	0
Training session #6 (6)			0	0



- Q4 Currently, how much would you say you know about fair use copyright law?
- A great deal (1)
 - A lot (2)
 - A moderate amount (3)
 - A little (4)
 - Nothing at all (5)
- Q5 As part of your work at the library, in a typical week how many times do you answer questions related to fair use copyright law?
- Five times or more (4)
 - Three to four times (3)
 - One to two times (2)
 - Never (1)
- Q6 If a patron asked you a question about fair use copyright law at this time, how confident are you that you could assist the patron?
- Extremely confident (1)
 - Very confident (2)
 - Somewhat confident (3)
 - Slightly confident (4)
 - Not confident at all (5)
- Q7 How much help would you be able to give a patron who has a difficult question about fair use copyright law?
- A great deal (1)
 - A lot (2)
 - A moderate amount (3)
 - A little (4)
 - None at all (5)
- Q8 Currently, how well are you able to explain fair use copy right law to a colleague?
- Extremely well (1)
 - Very well (2)
 - Moderately well (3)
 - Slightly well (4)
 - Not well at all (5)
- Q9 What is your year of birth?
- Q10 What is your sex?
- Male (1)
 - Female (2)
- Q11 What is the highest level of school you have completed or the highest degree you have received?
- Less than high school degree (1)
 - High school graduate (high school diploma or equivalent including GED) (2)
 - Some college but no degree (3)



- Associate degree in college (2-year) (4)
- Bachelor's degree in college (4-year) (5)
- Master's degree (6)
- Doctoral degree (7)
- Professional degree (JD, MD) (8)

Q12 Which of the following best describes your current job or position title at the University of Illinois Library?

- Graduate assistant (1)
- Academic professional (2)
- Administration (3)
- Assistant professor (4)
- Associate professor (5)
- Full professor (6)
- Other—Please specify (7) _____

Q13 How many years have you worked for the University Library?

- Number of years (1) _____

Appendix B

Pretest Fair Use Hypothetical

Please answer the question below by writing your response in full sentences to the best of your ability. Please do not look at any materials when answering this question.

A library user approaches you at the library information desk. The library user is holding a book published in the United States in 1992 containing numerous images (approximately 100 images on approximately half of the pages of the book) from a famous artist (all under U.S. copyright protection). The user asks whether it would be permissible for her to make a scan of about one-third of the images to use in an academic blog post about art history. In the post, the art historian plans to shrink the size of the images, analyze the images one by one, and provide commentary about the meaning of the images related to the 1990s period in American art. The user discloses that she does receive some money from the blog in the form of marketing revenue from advertising. What kind of analysis would you conduct with the user? Please be specific and include in your analysis not only the legal considerations, but the factual ones as well.



Appendix C

Posttest Fair Use Hypothetical

Please answer the question below by writing your response in full sentences to the best of your ability. Please do not look at any materials when answering this question.

A library user approaches you at the library information desk. The library user has a stack of books published by J. K. Rowling in the Harry Potter series (all under U.S. copyright protection). The user tells you that she has designed a technology that “reads” scans of book chapters and creates a text map demonstrating the story arc in a picture. The ultimate output of the story arc is a beautiful shape of dots on paper, with the color of the dots representing different actions that occur in the book (for instance, a red dot means someone has died, a blue dot means a loving relationship has been formed, etc.). The user plans to scan the entire series of Harry Potter and put each book through the technology to create text maps of the plot and then put each plot map into a book to sell through a publishing company. The user asks, is this considered fair use? What kind of analysis would you conduct with the user? Please be specific and include in your analysis not only the legal considerations, but the factual ones as well.

Appendix D

Second Posttest Survey

- Q1 Since the training in fair use copyright law that you received in April from Kyle Courtney, have you had an opportunity to answer a patron’s question about fair use copyright, or have you not had such an opportunity?
- Have had (1)
 - Have not had (0)
- Q2 Please describe how you were able to use the information from the fair use training in your work in any way (i.e., if you were able to answer a patron question, please indicate what the question was and how you were able to help the patron).
- Q3 How helpful was the training to you when answering the fair use copyright question?
- Not helpful at all (1)
 - Somewhat helpful (2)
 - Moderately helpful (3)
 - Very helpful (4)
 - Extremely helpful (5)



Q4 Would you recommend the Kyle Courtney fair use copyright training to others?

- Would recommend (1)
- Might recommend (2)
- Would not recommend (3)

Q5 Please indicate why you would recommend the Kyle Courtney fair use copyright training to others.

Q6 Since the training in fair use copyright law that you received in April from Kyle Courtney, have you had an opportunity to use the information in any other way in your work, or have you not had such an opportunity?

- Have had (1)
- Have not had (0)



Appendix E

Rubric

Ranked from low to high comprehension of fair use

0	1 (low)	2	3	4 (high)
Nonresponsive or "I don't know."	<p>Fails to identify statutory fair use factors.</p> <p>Fails to understand that four fair use factors are weighed / balanced, and not an absolute measure for each factor.</p> <p>Fails to apply each of the relevant fair use factors.</p> <p>Fails to demonstrate an understanding of application of each fair use factor to facts of hypothetical.</p> <p>Comes to the indefensible conclusion regarding fair use, or fails to come to a conclusion regarding fair use.</p>	<p>Lists all statutory fair use factors.</p> <p>Shows basic understanding of fair use factors and utilizes some, but not all, of the relevant facts in the analysis.</p> <p>Comes to indefensible conclusion regarding fair use or fails to justify ultimate conclusion on fair use using factors.</p>	<p>Lists all statutory fair use factors and associates each factor with established criteria.</p> <p>Shows basic understanding of fair use factors, and utilizes facts for the factors, but may misapply facts at times.</p> <p>Comes to indefensible conclusion regarding fair use or does not adequately demonstrate how the author came to the ultimate conclusion regarding fair use.</p>	<p>Lists all statutory fair use factors, associates with established criteria, and understands how the factors relate to one another, and emphasizes how a transformative use would relate to each factor.</p> <p>Shows superior understanding of fair use factors, and how the facts relate to each fair use factor.</p> <p>Considers other plausible factors not within the statute, but supported through salient case law and / or best practices, including the concept of "transformative" use.</p> <p>Comes to defensible conclusion regarding fair use and author can justify that conclusion using factors and facts.</p>



Appendix F

Sample of Answers Ranging from 0 to 4 (typographical errors remaining)

0: "I don't know."

1: "I believe the analysis would need to start with the portion/extent of the work that would be duplicated. I don't think that the fact that the user is paid by the blog makes a difference, though I could be wrong. I think it would help that she is analyzing [sic] the pictures rather than duplicating the same purpose for which they were originally published."

2: "I would first let her know that there are copyright/fair use librarians for consulting such issues. [redacted] I would tell her that her text analysis project should be considered as fair use. I would caution her about how she is going to do after the project—because sharing all books in its entirety would be copyright violation."

3: "I would tell her that the amount (1/3) is nowhere in copyright law, so we must analyze the legality in other ways. This is for education purposes, which is a greater indication of fair use. However, the fact that she receives money means it is not non-profit. [sic] Another consideration is that she is altering the images, and therefore they are not exact copies. Finally, I would tell the professor that technically, something cannot be known to be fair use unless she gets sued and a judge rules it."

4: "The images are decidedly under copyright, so that initial piece of analysis is established. Without reviewing Title 17, there does not seem to be an immediately obvious exception apart from Fair Use. The use of the work is clearly within the definition of transformative, as it is being used for scholarship and analysis. Without reading the text of the book, it at least sounds as if the original text is about the artist, and not about the primary subject of the place of the artist within 1990s American art—and a writing in 2017 would obviously have a different means of framing those issues. The use of the book and images is clearly a means of establishing factual artifacts, rather than appropriation for a similar creative use as the originals. Amount and substantiality remains an elusive thing to codify or measure, and 30 out of 100 images is rather a lot. However, it is not a complete reproduction of the images in the book.

The advertising revenue does not in and of itself negate the other considerations [sic], though it does seem to offer a weakish argument that the re-use is for profit. Even still, though, this does not seem like a consideration that should carry too much weight since fair use is not prohibited by profitability factors.

As a librarian, I could [sic] recommend that the usage may well fall within the parameters of fair use. However, the artist or the current copyright holder for the artists' images may still contact the blog author about the images use, so she should either have a plan for addressing that, or seek more substantial legal advice before proceeding as to a best response if a challenge arises."



Notes

1. The data underlying this research article appear at https://doi.org/10.13012/B2IDB-8336948_V1.
2. Allison Estell and Laura Saunders, "Librarian Copyright Literacy: Self-Reported Copyright Knowledge among Information Professionals in the United States," *Public Services Quarterly* 12, 3 (2016): 218.
3. Limitations on Exclusive Rights: Fair Use, 17 U.S.C. § 107 (2012).
4. *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).
5. *Ibid.*, 579.
6. *Ibid.*, 569.
7. Michelle M. Wu, "Collaborative Academic Library Digital Collections Post-Cambridge University Press, HathiTrust, and Google Decisions on Fair Use," *Journal of Copyright in Education and Librarianship* 1, 1 (2016): 14, <https://doi.org/10.17161/jcel.v1i1.5921>, citing *Authors Guild v. Google, Inc.*, 804 F.3d 202, 224 (2015).
8. *Cariou v. Prince*, 714 F.3d 694, 707 (2d Cir. 2013).
9. Kenneth D. Crews, "The Law of Fair Use and the Illusion of Fair-Use Guidelines," *Ohio State Law Journal* 62, 2 (2001): 605, citing *Dellar v. Samuel Goldwyn, Inc.*, 104 F.2d 661 (1939).
10. Wu, "Collaborative Academic Library Digital Collections," 5.
11. Chris Morrison and Jane Secker, "Understanding Librarians' Experiences of Copyright: Findings from a Phenomenographic Study of UK Information Professionals," *Library Management*, 38, 6–7 (2017): 360, doi:10.1108/LM-01-2017-0011.
12. The United Kingdom is a member of the Berne Convention with copyright laws analogous to the United States. In the U.K., the concept of fair dealing replaces the concept of fair use. Lynette Owen, "Fair Dealing: A Concept in UK Copyright Law," *Learned Publishing* 28, 3 (2015): 229–31.
13. Morrison and Secker, "Understanding Librarians' Experiences of Copyright," 360n10.
14. Paul D. Healey, "In Search of the Delicate Balance: Legal and Ethical Questions in Assisting the *Pro Se* Patron," *Law Library Journal* 90, 2 (1998): 138.
15. Deborah H. Charbonneau and Michael Priehs, "Copyright Awareness, Partnerships, and Training Issues in Academic Libraries," *Journal of Academic Librarianship* 40, 3–4 (2014): 230–31.
16. Estell and Saunders, "Librarian Copyright Literacy," 218.
17. Charbonneau and Priehs, "Copyright Awareness, Partnerships, and Training Issues in Academic Libraries," 231.
18. Nancy Sims, "Lies, Damned Lies, and Copyright (Mis)Information: Empowering Faculty by Addressing Key Points of Confusion," Association of College and Research Libraries (ACRL) Conference, Philadelphia, PA, March 30–April 2, 2011, http://www.ala.org/acrl/sites/ala.org.acrl/files/content/conferences/confsandpreconfs/national/2011/papers/lies_damned_lies.pdf.
19. *Ibid.*, 283.
20. *Ibid.*, 286–92.
21. *Ibid.*, 283.
22. *Ibid.*, 286.
23. *Ibid.*, 288.
24. *Ibid.*, 292.
25. LeEtta Schmidt and Michael English, "Copyright Instruction in LIS Programs: Report of a Survey of Standards in the U.S.A.," *Journal of Academic Librarianship* 41, 6 (2015): 741.
26. *Ibid.*, 742.
27. Kenneth D. Crews, "The Law of Fair Use and the Illusion of Fair-Use Guidelines," *Ohio State Law Journal* 62, 2 (2001): 605.
28. Sean Owens, Copyright Law Course Syllabus, Spring 2015, University of Cincinnati College of Law, <https://www.law.uc.edu/sites/default/files/Copyright%20Law%20>



- Spring%202015.pdf; T. J. Chiang, Syllabus for Copyright Law, Fall 2013, George Mason University Antonin Scalia School of Law, https://www.law.gmu.edu/assets/files/academics/schedule/2013/fall/CHIANG_Copyright-S.pdf; Randal C. Picker, Copyright, Fall 2016, University of Chicago Law School, <http://picker.uchicago.edu/Copyright/Syllabus.htm>; William Fisher, Copyright, Spring 2013, Harvard Law School, https://cyber.harvard.edu/people/tfisher/Copyright_Syllabus_2013.htm; Jessica Litman, Copyright Law, Winter 2018, University of Michigan Law School, <http://www-personal.umich.edu/~jdlitman/classes/copyright/syllabus.html>; Leon Friedman, Copyright Law Syllabus, Fall 2016, Maurice A. Deane School of Law at Hofstra University, <https://law.hofstra.edu/currentstudents/academics/academicresources/readingassignmentsandsyllabi/2016-17/fall/upperdivision/copyright/friedman/syllabus.pdf>.
29. Julia Rodriguez, Katie Greer, and Barbara Shipman, "Copyright and You: Copyright Instruction for College Students in the Digital Age," *Journal of Academic Librarianship* 40, 5 (2014): 487–90; Cindy Kozumplik and John Kreutziger, "Copyright Compliance: Conducting a Fair Use Training Session," *Community & Junior College Libraries* 16, 1 (2010): 25–26.
 30. Frank Pajares, "Self-Efficacy Beliefs in Academic Settings," *Review of Educational Research* 66, 4 (1996): 547; Albert Bandura, *Self-Efficacy: The Exercise of Control* (New York: W. H. Freeman, 1997), 382.
 31. Shinichi Monoi, Nancy O'Hanlon, and Karen R. Diaz, "Online Searching Skills: Development of an Inventory to Assess Self-Efficacy," *Journal of Academic Librarianship* 31, 2 (2005): 99.
 32. ACRL, "Framework for Information Literacy for Higher Education," 2015, <http://www.ala.org/acrl/standards/ilframework>.
 33. Ibid.
 34. Ibid.
 35. The nonequivalent control group design is a methodology involving a pretest, a posttest, and a control group, but in which the groups of participants are not randomly assigned. Thus, because the researcher is unable to follow true experiment protocol conditions, the testing is also labeled "quasi-experimental." *Research Methods in Psychology* (Minneapolis: University of Minnesota Libraries, 2010), CC BY-NC-SA, <https://doi.org/10.24926/8668.2201>.
 36. Harvard Library Office for Scholarly Communication, "Copyright First Responders," 2017, <https://osc.hul.harvard.edu/programs/copyright/first-responders/>.
 37. "Purposive sampling, as suggested by its name, is about purposively selecting specific participants for the study." Barbara M. Wildemuth and Leo L. Cao, "Sampling for Intensive Studies," chap. 14 in Barbara M. Wildemuth, *Applications of Social Research Methods to Questions in Information and Library Science* (Westport, CT: Libraries Unlimited, 2009), 130.
 38. "A Likert scale begins with a statement, and asks the respondent to report their level of agreement or disagreement with the statement. Most Likert scales . . . have five levels of responses." Barbara M. Wildemuth, "Measuring Cognitive and Affective Variables," chap. 27 in Barbara M. Wildemuth, *Applications of Social Research Methods to Questions in Information and Library Science*, 276n1.
 39. Healey, "In Search of the Delicate Balance," 134–36.
 40. Harvard Library Office for Scholarly Communication, "Copyright First Responders."
 41. *Folsom v. Marsh*, 9 F. Cas. 342 (C.C.D. Mass. 1841).
 42. Limitations on Exclusive Rights: Reproduction by Libraries and Archives, 17 U.S.C. § 108(f) (4) (2012).
 43. Kevin Smith and Lisa Macklin, "A Framework for Analyzing Any U.S. Copyright Problem," 2014, <https://www.k-state.edu/copyright/docs/CopyrightFramework.pdf>.
 44. Y. Malini Reddy and Heidi Andrade, "A Review of Rubric Use in Higher Education," *Assessment & Evaluation in Higher Education* 35, 4 (2010): 435.



45. Christina Gola, Irene Ke, Kerry Creelman, and Shawn Vaillancourt, "Developing an Information Literacy Assessment Rubric: A Case Study of Collaboration, Process, and Outcomes," *Communications in Information Literacy* 8, 1 (2014): 132, <http://www.comminfolit.org/index.php?journal=cil&page=article&op=view&path%5B%5D=v8i1p131&path%5B%5D=192>.
46. Reddy and Andrade, "A Review of Rubric Use in Higher Education," 443.
47. Ibid., 443–44.
48. Additional demographic data are available at https://doi.org/10.13012/B2IDB-8336948_V1. 36.
49. "We assume a hypothesis is true. We then collect data to test the hypothesis. Based on the data we can calculate the . . . probability that the hypothesis is true. If the probability that the hypothesis is true is smaller than a pre-set level, usually 0.05, we will reject the hypothesis; otherwise we will not reject it." We then compare the probability that a null hypothesis is true against a test statistic. The test we use to calculate the test statistic is called the *t*-test. Liwen Vaughan, *Statistical Methods for the Information Professional: A Practical, Painless Approach to Understanding, Using, and Interpreting Statistics* (Medford, NJ: Information Today, 2013), 60–61.
50. Schmidt and English, "Copyright Instruction in LIS Programs," 741.
51. See note 49.
52. Morrison and Secker, "Understanding Librarians' Experiences of Copyright," 360.
53. Estell and Saunders, "Librarian Copyright Literacy," 225.
54. Ibid.