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## Building Copyright Confidence in Instructional Designers

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**C**OLLEGES AND UNIVERSITIES ARE INCREASINGLY DIRECTING their efforts towards online educational initiatives in order to expand their reach, improve educational opportunities and outcomes, and compete for potential students at scale. Staff and personnel with expertise in online learning platforms and new technologies, as well as a solid foundation in online learning pedagogies, are in high demand. The field of instructional design is rapidly growing to meet this need, producing instructional designers with these critically necessary skills. Instructional designers usually provide support to teaching faculty in developing and optimizing content for online instruction. They may also be responsible for providing quality control for online content. In this role, they often find themselves in the position of advising on or enforcing copyright compliance, despite rarely having had formal training in copyright and how it applies to educational situations. Since each instructional designer usually works with several faculty members, there is an opportunity to build capacity among this constituency and improve copyright compliance in a large number of courses. To do this, instructional designers need targeted copyright education that builds their confidence in evaluating common educational scenarios.

In this case study, I will describe my unique situation as an embedded librarian among the instructional designers in EdPlus at Arizona State University (ASU). First, I will provide an overview of the typical responsibilities and copyright needs of instructional designers, followed by a discussion of the methods I use for providing targeted copyright instruction, and finally I will conclude with ideas for potential next steps in providing this instruction.

As the scholarly communication librarian, I am the *de facto* copyright expert at ASU. There is otherwise little centralized copyright assistance for faculty and staff. In order to fill this need, I created a library guide that provides general information about copyright and fair use, specific resources targeted at instructors and authors, and links to reliable sources for further information.<sup>1</sup> Our Office of General Counsel recommends my library guide as a resource for copyright questions that are asked of them. I regularly teach copyright workshops—specifically copyright for instructors and copyright for authors—provide individual consultations, and answer most reference questions that deal with copyright issues. While I am not a lawyer, I usually have sufficient knowledge of copyright law to guide others through a copyright analysis to come to their own conclusions and, if not, refer them to resources that can help. Over the past few years, I have received an increasing number of copyright questions from instructional designers around the university, specifically from those affiliated with EdPlus.

EdPlus is a rapidly growing division of ASU. When the unit formed in 2011, it managed 22 programs serving 5,402 students. By 2017 there were 140 programs, with over 42,000 students.<sup>2</sup> Additionally, the work of EdPlus has expanded from managing traditional online degree programs such as ASU Online to exploring nontraditional learning pathways, such as the Global Freshman Academy and the Mastercard Foundation's Mastercard Scholars Program. EdPlus is located at Skysong, a public-private partnership with ASU, in Scottsdale, Arizona. While this location is home to some ASU departments, it also includes office space for innovative companies and startups, provides mentorship programs for students and businesses to work together, and rents out meeting space. However, classes are not offered there. I had led copyright and fair use workshops at Skysong a few times and had started to develop relationships with some of the employees of EdPlus there. The EdPlus leadership contacted me to discuss copyright considerations and request my assistance in finding open content just days before our launch of the Global Freshman Academy, a series of massively open online courses (MOOCs) in 2015. In 2016, the ASU Library assigned a librarian to work at Skysong as an on-site liaison to EdPlus, so as to provide a direct connection to library resources and services for this rapidly innovating team.

The ASU Library is in the midst of a major remodeling of the Hayden Library, our university's largest library building and the home of more than ninety personnel. This remodeling has required a relocation of the majority of our print collection to other libraries and high-density storage facilities, as

well as finding temporary and permanent workspace for all but a few library staff who remain to provide services at Hayden during construction. Most personnel were relocated to other library locations, but EdPlus offered space for another librarian at Skysong. Since one of their greatest information needs was copyright and open licensing, I was the natural choice. My move to Skysong presented me with a great opportunity to explore embedded librarianship. Embedded librarians are often located in close physical proximity to a specific group, allowing them to become trusted members of the community.<sup>3</sup> My goals were to develop a closer relationship with the instructional designers at EdPlus and explore methods, both formal and informal, for improving their understanding of copyright. I packed up my office, which had been in the largest library at ASU's largest campus, serving 50,000 students during the semester, and moved to Skysong. The environment there is very different from a traditional academic library setting, with more of a corporate tone. Employees work in an open-office arrangement in cubicles or workstations, but there is plenty of natural lighting (a pleasant change from my prior basement office), rooms for small and large-group meetings and events, a staff lounge, a workout room, and regularly scheduled professional development programs.

EdPlus has welcomed us with open arms. We are invited to attend monthly group meetings and were added to EdPlus's Slack instance, which allows us to see updates, news, and the general conversations that take place among the staff, including what issues concern them and what challenges they face. This helps us to assess their information needs. I had only a surface understanding of the roles that instructional designers fill before moving to EdPlus, but working among them for the past year has deepened my knowledge.

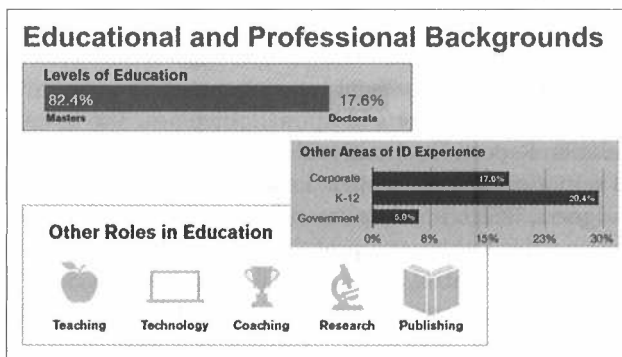
## WHAT DOES AN INSTRUCTIONAL DESIGNER DO?

The realm of online education has evolved rapidly, and it is clear that many of the techniques for teaching in a face-to-face classroom do not translate well to an online environment. There is a need to explore different pedagogical approaches and new ways to present learning materials in order to keep students engaged and to improve educational outcomes. The Bill and Melinda Gates Foundation Report, "Instructional Design in Higher Education," breaks the general responsibilities of instructional designers into four roles.<sup>4</sup> First, they are designers, which involves creating new courses or redeveloping old courses, creating curriculum and professional development for instructors, and providing quality control and accessibility compliance. Second, they are managers, providing project management for developing courses, promoting instructional design services, and serving as liaisons to administrators, instructors, curriculum designers, and information technology. Third, they are trainers, teaching faculty about new technology tools and online pedagogy

techniques, and providing professional development on course design, curriculum, assessment, active learning, and theory and practice. Finally, they provide support, resolving technical problems and instructional challenges, and migrating face-to-face courses to an online system. In sum, instructional designers apply their understanding of learning, teaching, and technology to online course development in order to make it more meaningful to the students.<sup>5</sup> The titles of instructional designers vary, and the position may be called e-learning developer, educational technologist, or instructional technologist.

Most instructional designers have a blend of teaching and technology backgrounds, and the majority have at least a master's degree (see figure 7.1). Indeed, advanced degrees in instructional design or technology are becoming more common.<sup>6</sup> The instructional designers and staff at ASU come from teaching, library, or technology backgrounds.<sup>7</sup> They work closely with faculty and instructors to develop online learning modules that follow current educational best practices. They coach faculty and instructors on best practices for online engagement and learning, improving student outcomes, and leveraging technology to improve the teaching and learning experience. While the instructor leads and develops the syllabus and general content of the course, the instructional designer coaches the instructor on issues such as articulating learning objectives, developing appropriate assessment instruments, and recommending the best tools for the best outcomes. The designer also works with the instructor to determine and develop the best supplemental material to use, including video lectures, tutorials, and any other learning objects that are best suited to the material. Therefore, instructional designers are in a unique position to help promote good copyright practice and encourage their faculty partners to do the same.

In my experience, instructional designers' understanding of copyright is spotty at best and is based on community practices, urban legends, outdated classroom guidelines, and departmental policies; this imperfect understanding is consistent with that of university faculty and instructors in general.<sup>8</sup>



**FIGURE 7.1**

Instructional Designers' Educational Background

Instructional designers struggle to find time for professional development while balancing a heavy workload with a constant emphasis on speed of delivery. Since ASU does not include information about copyright in its training for instructors and the Office of General Counsel does not assist with copyright inquiries, the most reliable resource for copyright and fair use questions from faculty, staff, and students is the ASU Library.

## SPECIFIC COPYRIGHT NEEDS

Higher education is grappling with the application of common copyright practice to a rapidly changing online learning environment where even our definitions of “student” and “classroom” are evolving. These definitions matter when determining which exceptions to the exclusive rights of copyright holders apply to any given situation. Section 110 of the U.S. Copyright Act, known as the classroom use provision, makes it possible for teachers at non-profit institutions to perform or display copyrighted works, such as showing a film or displaying a work of art. The Technology, Education and Copyright Harmonization (TEACH) Act of 2002 attempted to cope with the transition to online learning, but its lengthy list of institutional and technological requirements makes it impractical for most situations. The licenses for online library resources typically restrict use to “authorized users,” which is usually defined as currently enrolled students, faculty, and staff. Access is granted through physical presence on a campus or through IP authentication using an institutionally provided user name and password. Increasingly, institutions must rely on the doctrine of fair use, section 107, in order to incorporate and adapt copyrighted materials in online learning environments. While fair use is a powerful and flexible doctrine, it is widely misunderstood and is unfortunately perceived as an unreliable tool.

EdPlus has a specific and complex set of needs with regard to understanding and complying with copyright. Its learning situations are nearly exclusive to online education and are only rarely face-to-face. While the ASU Online programs target officially enrolled students following a traditional degree path, many of the other initiatives do not. Professional development and accreditation courses targeting business partners are offered for a fee, so there is some question whether they are for-profit offerings. There are also an ever-increasing number of programs designed to expand educational opportunities to learners around the world who are not officially enrolled students. The Global Freshman Academy (GFA), for example, is a set of first-year courses offered on the edX platform as MOOCs, which means that anyone, anywhere, can register for these courses. If students register for one of these courses using the verified identity option, which has a small fee, they can choose to pay an additional fee to receive official ASU credit at any time, including after successfully completing and passing the course. Receiving a passing grade (a C or higher) in eight courses qualifies as a full freshman year and guarantees

admission to ASU. The credits are recorded as full ASU credit on a student's transcript, so the student can transfer those credits to another university if he or she desires.<sup>9</sup>

Another example is ASU's participation in the Mastercard Foundation Scholars program, a ten-year initiative to educate and prepare young people (primarily from sub-Saharan Africa) to lead change and make a positive social impact in their communities.<sup>10</sup> EdPlus received a grant from the Mastercard Foundation to design the Baobab Scholars Community Platform, a custom learning and social networking platform that delivers a personalized learning experience based on each Baobab Scholar's interests.<sup>11</sup> Baobab was fully implemented in fall 2016 and includes learning modules, discussion boards, and other electronic resources designed to help each Scholar further their personal and academic development. A key component of this program is a commitment to lifelong learning and building a sustained community, so this network will continue to be available to Scholars after they complete their education, including access to curated resources and educational content.

These examples illustrate some of the complex copyright issues that arise: a mixture of nonprofit and for-profit activities; the use of closed learning management systems as well as MOOCs on an open platform; officially enrolled students with access to library databases versus learners around the world with dubious library access; and hosting and delivering content to students in other countries. Different copyright exceptions and provisions apply to each of these scenarios, and the instructional designers are in a position to build capacity for copyright best practices at scale.

## LEARNING OBJECTIVES

My first steps to build confidence and capacity in my new community included discussing copyright documentation with the EdPlus compliance team and assisting with a copyright audit of a course. Then I determined that the immediate coaching needs were a basic overview of copyright, establishing that copyright and attribution are separate issues, developing a deeper understanding of fair use and an increased comfort level for a fair use evaluation, clarifying the situations where the TEACH Act may apply, and increasing the understanding of Creative Commons (CC) licenses and strategies for searching for openly licensed content. These priorities were also informed by the common general questions I've received regarding copyright, including clarifying what is protected by copyright and what is in the public domain online, interpreting website terms of use and digital rights management/Digital Millennium Copyright Act issues, and explaining attribution best practices.

As expected, I receive the most questions about fair use. The easiest questions to answer deal with whether it is acceptable to link to an outside, freely available source or to use platform-provided embed codes, such as embedding

a YouTube video. However, most fair use questions require walking through an analysis of the four factors of fair use, and it became clear that the instructional designers were unsure about their ability to do this. They also feel pressure from instructors, usually faculty, who may take a more cavalier approach to fair use than is advisable. I do not typically receive any questions about the TEACH Act from instructional designers, but I have been able to identify situations where it is the most applicable copyright exception, despite its many detailed stipulations.

While many of the instructional designers are aware of Creative Commons licenses and know to specifically seek out CC-licensed content, they are not fully informed of the different license options and often need help interpreting their terms. For example, TED Talks are popular resources for online education, and are usually licensed with a CC-BY-NC-ND license.<sup>12</sup> Even so, instructional designers are unsure whether it's acceptable to download the video file of a TED Talk and upload it into a course management platform; whether they can use a TED Talk if a fee is charged for a course; and whether they can make a translation of the TED Talk's transcript.

I planned a variety of coaching opportunities using both formal and informal approaches to address these needs and improve core competencies among the instructional designers. My more formal approaches include planning traditional workshops and webinars on copyright, fair use, Creative Commons, and searching for openly licensed resources; creating targeted tutorials; and participating in team meetings. Informally, I have taken advantage of being embedded among the team and have made myself visible and available for informal conversations and for answering questions, in person, on e-mail, and on Slack.

## HOW TO HELP

### *Informal Approaches*

I had already been providing some copyright consultation and reference services to EdPlus prior to moving to Skysong, mainly via e-mail or referral. However, my physical proximity and increased visibility there have proven immensely valuable. My cubicle is situated among the instructional designers, which reduces the barriers to addressing informal questions and discussing instructional opportunities through casual conversation.

While I still receive some questions via e-mail, the majority of the online conversation with the team is done via Slack. Slack is a combination discussion board and instant messaging service; it provides a place for asynchronous conversation among groups of various sizes through subject- or team-focused channels, as well as the ability to direct message individuals or small groups. EdPlus added our library contingent to its Slack instance, and we were invited to the general channel (for everyone on the instance), the ASU-wide instructional design channel, and the EdPlus-only instructional design team, as well as the

channels for open education initiatives. This access provides us with the opportunity to share relevant information to a wide group without cluttering our e-mail or needing an e-mail list. I can post relevant copyright news or resources to a targeted group, and often provide links to open repositories of content.

Slack is the method by which I answer the majority of copyright questions from EdPlus, using the direct message feature. Instructional designers now know that I am generally available on Slack, and they will send me questions. The instant message function is much easier than e-mail to tease out specific details in a back-and-forth conversation, and it allows me to easily link to references and to answer questions responsively.

## FORMAL APPROACHES

The instructional designers at EdPlus have regularly scheduled monthly meetings in order to share information, provide updates on different projects, and celebrate accomplishments. There is a standard agenda template, and the library is fortunate to have a standing agenda slot each month for providing updates and information. I make a point to attend this meeting when I am available, and I include at least one targeted copyright resource for the participants—such as marketing an upcoming workshop or a Fair Use Week event, providing a link to a library guide, or mentioning a useful tool. The agenda is shared using Google Docs, so I can see in advance what topics are being discussed and I can target my updates to issues of immediate concern. For example, if I see that the Global Freshman Academy team is working on adding a new MOOC course, I might mention the OER (Open Educational Resource) Metafinder tool for locating open educational resources. I find that my physical presence at this meeting each month emphasizes my availability as a resource as well.

While the greatest concentration of instructional designers resides within EdPlus, instructional designers are also spread among the various colleges and schools at ASU. EdPlus hosts a quarterly meeting of all the instructional designers at the university. This meeting has a team-building emphasis, and again, my colleague and I are invited to participate. It has been a great opportunity to build relationships and make library services more visible, as well as position ourselves as reliable resources for information related to copyright.

EdPlus provides a regular schedule of the professional development opportunities that are available to ASU instructors and instructional designers, such as accessibility compliance and academic integrity using Eventbrite. By partnering with some of the EdPlus staff, I am able to plan workshops and list them on the existing schedule, as well as track registrations. I work with my library colleague as well as an EdPlus media manager with TEACH Act knowledge to present an in-person workshop that covers the basics of copyright, the TEACH Act, and fair use (see the “Copyright and Fair Use Workshop Outline”). We provided participants with a customized copyright analysis



infographic and a standard fair use checklist (see figure 7.2). The workshop included group discussions of common scenarios encountered in online learning environments. We adapted this presentation to a webinar, which allowed us to incorporate polls to help us evaluate the attendees' previous knowledge and keep them engaged in the absence of a group discussion.

## Copyright and Fair Use Workshop Outline

### A. Learning objectives

1. Understand what copyright covers
2. Understand the relationship between copyright and attribution

### B. What is copyright and what does it cover?

1. What types of works are covered by copyright?
2. Bundle of rights
  - Copy
  - Distribute
  - Modify
  - Perform/display
  - Make derivative works
3. What is not covered by copyright?
4. What copyright exceptions do we use for education?
  - Classroom use (section 110a)
  - TEACH Act (section 110b)
  - Fair use (section 107)
  - Four factors:
    - ◊ Purpose
    - ◊ Amount
    - ◊ Nature
    - ◊ Effect
  - Sample scenario—work through as a group
    - ◊ An instructor is creating a Global Freshman Academy course on architecture and wants to include a photo of a Frank Lloyd Wright (d. 1959) building that he found on a blog. The blogger has not identified who took the picture or where it came from. Attempts to contact the blogger have resulted in no response.
  - Breakout groups—use Scenarios handout, Checklist handout
  - Report out/discussion

### C. Resources/questions



Work through the following five questions, in the order they are presented, to identify which parts of copyright law apply to your specific situation.

### 1. IS THE WORK PROTECTED BY COPYRIGHT?

a. Is the work I want to use protected by copyright, or is it in the public domain?

b. If I wrote it, do I still own copyright, or did I sign over rights for my intended use to the publisher?

### 2. IS THERE A SPECIFIC EXCEPTION IN COPYRIGHT LAW THAT MY USE?

a. Is my intended use covered by a specific exception to the exclusive rights in the copyright law, such as the one for libraries or for classroom performances and displays?

### 3. IS THERE A LICENSE THAT COVERS MY USE?

a. Is there a Creative Commons license attached to the work? If so, can I comply with the terms of the license, or can I find another useful work that is CClicensed?

b. If affiliated with an educational institution, is there a license that governs how the copyrighted material I'm accessing through my library can be used? If so, can I comply with the license terms? If you are uncertain, your librarian should be able to help you.

### 4. IS MY USE COVERED BY FAIR USE?

It's check with the library!

a. Four factors are:

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.

b. Questions for transformative fair use under factor one are:  
Does the copyrighted material help me make my new point?  
Will it help my readers or viewers get my point?  
Have I used no more than is needed to make my point? (Is it "just right"?)

### 5. DO I NEED PERMISSION FROM THE COPYRIGHT OWNER FOR MY USE?

a. If so, first locate the copyright owner and fully explain your intended use in your permission request.

b. If no response or answer is no, reconsider your use of this work to see if you can make a fair use, or consider using another work.

SOURCE: Adapted from "A Framework for Analyzing any Copyright Problem" by Kevin Smith, Lisa A. Macklin, and Anne Gilliland. CCBYSA

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FIGURE 7.2

Copyright Analysis Infographic

## **Creative Commons Licenses and Open Search Strategies Webinar Outline**

### **A. Learning objectives**

1. Recognize when materials are under a Creative Commons license
2. Describe the differences between CC licenses
3. Accurately apply knowledge of CC licenses to the selection and use of materials
4. Use effective search practices for finding openly licensed materials

### **B. Reasons for Creative Commons**

### **C. Introduction to Creative Commons licenses, with a quick summary of each license**

### **D. Knowledge check—poll**

1. If you wanted to make a change to a CC-licensed work, which license allows that?
  - CC-BY-SA
  - CC-BY-ND
  - CC-BY-ND-NC

### **E. Finding content**

1. Known content (e.g., specific articles or books)
2. Unknown content (e.g., looking for images for a presentation)

### **F. Open Attribution Builder**

#### ***Knowledge check—poll***

1. You need a great image of a Tasmanian devil for a presentation. Which resource would you use to find a CC-licensed image?
  - OER MetaFinder
  - CC Search
  - Open Access Button
2. You know about a perfect article to support an assignment in your course. Which of the following resources would you search in order to locate an openly available version of the article?
  - UnPaywall
  - HathiTrust
  - Internet Archive

We then presented a webinar providing an overview of Creative Commons licenses and recommending strategies for finding open content. We described each of the different CC licenses, and talked about different resources for different content types (such as text or images). Then we described advanced search strategies that enable limiting searches by license type in order to specifically find content that has fewer copyright restrictions. The outline of our presentation is included as “Creative Commons Licenses and Open Search Strategies Webinar Outline.”

As part of its professional development training to improve faculty members’ proficiency in online teaching and learning, EdPlus provides an ASU Online Faculty Center, which includes a series of self-paced learning modules called “10 Minutes to Excellence.” Each module has a list of learning objectives that instructors should be able to achieve in under ten minutes. EdPlus invited me to contribute a copyright module, so I developed “Fair Use & Copyright for Online Instructors.” The learning objectives for the module are:

- Explain a basic overview of fair use
- Identify the four factors of fair use
- Evaluate the likelihood that a use would be considered fair with regard to teaching
- Find where to get help regarding fair use

Finally, I created two library tutorials—one on using videos in teaching, and one specifically on fair use. While these were not specifically targeted to instructional designers, they address questions that the designers often receive, allowing them to pass these resources along to instructors who struggle with these concepts.

## INDICATORS OF SUCCESS

One of the primary indicators of success is the increased level of engagement I have with the instructional designers at ASU. They are now much more familiar with the copyright resources that are available to them, and they are more likely to reach out to me with questions or to confirm their own evaluations. They frequently copy me on their responses to questions from faculty about copyright.

The evaluations and comments from our webinars and workshops have been positive. Most attendees report feeling more confident about achieving our learning objectives, and think that the webinar or workshop is a good use of their time. Their suggestions include adding more examples for discussion and more workshops on similar topics.

While I have not conducted a formal evaluation of my efforts here, anecdotally I can tell that it has made a difference. Several of the instructional

designers have stated how helpful it is to have me available as a resource, and they report that their confidence in making copyright evaluations and problem-solving with copyright has grown significantly as a result of regularly working with me to address their specific situations. I am starting to see more complex questions from many of them now that they handle more of the basics on their own, and they are more likely to check in with me on the result of their evaluation rather than ask for help.

## LESSONS LEARNED AND FUTURE IDEAS

Being embedded with the instructional designers has not been a one-way conversation. Prior to working at Skysong, I had only vague ideas of what instructional designers did. I have learned a great deal about their workflow and information needs through my relationships and conversations, and have gained a huge amount of respect for their field. I believe that I can improve my service by changing the types of information I provide and the ways I share it to better suit their needs.

One lesson is that in-person workshops do not provide a good return on the time investment for the number of people reached. There are rarely more than a dozen people who can attend. While I intend to continue offering workshops in person, I will limit these to once or twice a year, and instead offer webinars more often, especially now that I am more familiar with the technology and techniques. Additionally, I intend to record webinars and make them available for people to attend at their convenience.

Another important lesson is how best to provide reference information in ways that will be more practically useful. I have learned that the instructional designers are less likely to search the library web page or browse a library guide, and are much more likely to use their internal reference library, using a tool called Guru, which is where they keep and share information with their team. I have been given access to their team's library and can now add content in ways that will fit within their own workflows and project management cycles.

In the future, there is a need for a better method for documenting copyright decisions, such as fair use justifications, permissions granted, and licenses used. I plan to help develop a workflow for documenting these decisions in a standardized way for new projects. I'd also like to incorporate a copyright module into the regular training opportunities provided by EdPlus, such as the Masterclass for Teaching Online.<sup>13</sup> This two-week workshop for online instructors is offered on a quarterly basis and discusses best practices for online learning.

## CONCLUSION

Embedded librarianship has been a growing trend in the profession for several years, but as a scholarly communication librarian, I had not expected to be embedded anywhere. My move to Skysong to work alongside instructional designers has been a valuable experience. Learning more about the work of instructional designers has given me insight into how I can help improve their understanding of copyright and fair use principles in a more meaningful way than I would have otherwise. I believe that developing a strong working relationship built on mutual understanding and respect has enabled me to be proactive in addressing their information needs. Informal conversations with guidance and coaching through the particular copyright situations faced by instructional designers have greatly improved their confidence in making their own evaluations and dealing with faculty. As libraries look toward the information needs of their community, I recommend that they specifically target the instructional designers at their institutions.

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