



Copyright Workshop

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DISCLAIMER:

- Copyright is a complex and ambiguous topic.
- We don't have all the answers.
- We will point you to resources and help you find answers.

What is Copyright? Why should I Care?

- “The Congress shall have the power ...to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors exclusive Right to their respective Writings and Discoveries” (U.S. Constitution)

Recommended Approach:

- Most created works are copyrighted—even without the © symbol.
- Be especially aware of Fair Use and Public Domain.
- Use educational exemptions
- If concerned, get permission

Creators' Exclusive Rights (for a period of time):

- To reproduce their works
- To make derivative works
- To distribute copies of their works
- To publicly perform their works
- To publicly display their works

Users' Rights & Responsibilities:

- Copyright law sets guidelines for legal use of works.
- WE are the users. WE need to understand the options available to use copyrighted works responsibly.

Copyright Does NOT Affect:

- Facts and ideas
- Works which lack sufficient originality to qualify for copyright (phone books, calendars, etc.)
- Federal government publications created by federal employees in the course of their employment

Copyright Also Does NOT Affect:

- Public Domain
 - See www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm
- Works clearly and explicitly donated to the public domain or where the creator grants greater access

Copyright Does Affect:

- Published works after 1923
- Unpublished works where author died after 1936
- Anonymous works after 1886
- Current works of ANY type “fixed in a tangible format” – whether there is a © notice or not

Current Copyright Duration

- Individual creators and heirs of works created today hold copyright for 70 years after the death of author or
- Corporate authors hold copyright for the lesser of 95 years from publication or 120 years from creation.

Fair Use

- “...the fair use of a copyrighted work ...for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.” (Title 17 USC 107)

Four Factors of Fair Use: 1

- Purpose and character of the use
 - non-profit, educational versus commercial use
- Nature of the material being used
 - factual or fictional in nature
 - degree of creativity
 - published or unpublished

Four Factors of Fair Use: 2

- Amount and substantiality of the portion used in relation to the whole
 - Percentage used
- Effect of the use on the potential market for or value of the copyrighted work

Putting Fair Use Into Practice

- Fair Use was developed in 1976 with “analog” materials in mind, not digital. However, the intent is that copyright law should apply regardless of format.
- Use it or lose it!
- Examples

Fair Use Analysis

- Checklist sources
 - <http://www.copyright.iupui.edu/checklist.htm>
Checklist from Indiana University-Purdue University Indianapolis
 - <http://www.copyright.iupui.edu/checklist.htm>
Checklist from North Carolina State University

Less Fair

- Purpose of Use
 - Commercial
- Nature of Work
 - Very Creative
 - Unpublished
- Amount of Work
 - Entire or “Heart”
- Market Effect
 - Avoiding Sale

More Fair

- Purpose of Use
 - Educational
- Nature of Work
 - Factual
 - Published
- Amount of Work
 - Small, unsubstantial
- Market Effect
 - No Effect

Fair Use Analysis Results

- Ultimately a Risk-Benefit Analysis
- Remember, there are **NO GUARENTEES!**

Twists on Copyright Law

- Works in digital format are treated differently than other formats. (Thanks DMCA!)
- Published works are treated differently than unpublished works (theses, dissertations, diaries, etc.)
- Images are treated differently than print materials

Copyright Today

- Congress periodically addresses aspects of copyright to deal with technology changes
 - DMCA
 - TEACH Act

Educational Copyright References:

- Education Guidelines
- Educational exemption for certain performances and displays
- TEACH Act

Educational guidelines (Circular 21)

- Single copying for teachers
 - Chapter from a book;
 - An article from a periodical or newspaper;
 - A short story, short essay or short poem, whether or not from a collective work;
 - A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper

Educational guidelines (Circular 21)

- Multiple Copies for Classroom Use
 - Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion; *provided that:*
 - The copying meets the tests of brevity and spontaneity as defined below; *and,*
 - Meets the cumulative effect test as defined below; *and,*
 - Each copy includes a notice of copyright

Educational guidelines (Circular 21)

- Test for Brevity (basically 10%)
 - Prose:
 - Either a complete article, story or essay of less than 2,500 words, or
 - An excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.
 - Illustration:
 - One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.

Educational guidelines (Circular 21)

- Test for Spontaneity
 - The copying is at the instance and inspiration of the individual teacher, and
 - The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Educational guidelines (Circular 21)

- Cumulative Effects Test
 - The copying of the material is for only one course in the school in which the copies are made.
 - Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.
 - There shall not be more than nine instances of such multiple copying for one course during one class term.

Educational guidelines (Circular 21)

- Prohibitions 1
 - Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately.
 - There shall be no copying of or from works intended to be "consumable" in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.

Educational guidelines (Circular 21)

- Prohibitions 2
 - Copying shall not:
 - substitute for the purchase of books, publishers' reprints or periodicals;
 - be directed by higher authority;
 - be repeated with respect to the same item by the same teacher from term to term.
 - No charge shall be made to the student beyond the actual cost of the photocopying.

Educational exemption for certain performances and displays

- Certain performances and displays (17 USC 110)
 - performance or display of a work by instructors or pupils in the course of **face-to-face** teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made [emphasis added]

Educational exemption for certain performances and displays

- 110(1) only allows for display or performance of a copyrighted work in a **face-to-face** or **synchronous** class. Most current distance education classes are **asynchronous**. The TEACH Act was passed to address this problem.
- It is a compromise between what educators wanted and what publishers wanted.

TEACH Act:

- The Technology, Education, and Copyright Harmonization (TEACH) Act was signed into law November 2002.
- The exemptions it addresses are limited in scope and do not match the exemptions for face-to-face classrooms
- Educational institutions must meet specific requirements before TEACH can be used.
- The TEACH Act supplements Fair Use. It does not take its place.

TEACH Act:
What can be used

- Non-dramatic literary works (charts, journal articles, maps, book chapters, some types of music, etc.)
- Limited portions of dramatic literary works (plays, operas)
- Any work in ways that would typically occur in the physical, live classroom (e.g. non-dramatic videos)

TEACH Act:
What can't be used

- Works produced for the sole purpose of being used in distance education
- Required reading: textbooks, course packs, consumable workbooks
- Unlawfully made copies

TEACH Act:
Analog to Digital

- You can transfer analog to digital (e.g. VHS to DVD) if:
 - A digital format is not available for purchase
 - A digital format cannot be used because of protection mechanisms
 - You copy only the portion necessary
 - You do not make a copy of a digital copy

TEACH Act:
Institution obligations

- Must be an accredited non-profit educational institution
- Must have a copyright policy
- Must promote lawful copyright activity
- Must have copyright educational materials readily available

TEACH Act:
Technological obligations

- Must limit access to registered students to the extent technologically feasible
- Must reasonably prevent unauthorized copying and further distribution
- Must not retain materials longer than necessary for use
- Cannot interfere with technological measures employed by copyright holder

TEACH Act:
Instructor obligations

- Must have a notice that materials may be protected by copyright
- Must tell students they cannot distribute
- Uses only the type and amount of materials permitted by Act
- Use of materials in the program must be "an integral part of the class experience, controlled by or under the actual supervision of the instructor and analogous to the type of performance or display that would take place in a live classroom setting."

So How Do You Put It All Together?

- Your own materials
 - You are the creator (no problem)
 - BUT you may have illustrations, graphs, etc from other sources!
- Published material
 - Copyright decisions for Distance Education should be based on a combination of:
 - Educational guidelines
 - Fair Use
 - TEACH Act
 - Getting Permission

Getting Permission

- Use material already permitted
 - Library electronic content
- Use online permission sites
 - Copyright Clearance Center
 - Broadcast Music Inc.
 - Publisher's sites
- Write a letter asking for permission
 - <http://www.copyright.iupui.edu/pdweb.htm>
 - <http://www.lib.ncsu.edu/scc/misc/contents.html>

Resources to help you put it all together:

- Web sites
 - <http://www.utsystem.edu/OGC/intellectualProperty/cprtindx.htm>
 - <http://www.lib.ncsu.edu/scc/tutorial/index.html>
 - <http://www.copyright.iupui.edu/index.htm>
 - http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm

Resources to help you put it all together:

- Books
 - KF2995 .R87 2004. Russell, Carrie. Complete copyright: An everyday guide for librarians.
 - KF3002.Z9 S75 2004. Stim, Richard. Getting permission: how to license & clear copyrighted materials online & off.
 - KF3022.Z9 F57 2004. Fishman, Stephen. The public domain: how to find & use copyright-free writings, music, art & more.

Review

- Almost everything in tangible form is copyrighted, excepting Federal Government publications, Public Domain material, facts and ideas, and noncreative works
- Fair Use is your most powerful tool
- YOU are responsible for determining copy rights