Digital Content and Copyright
Copyright and You

Why Do I Need To Know About Copyright Law?

◦ In Your Professional Life
  • Papers, articles, other written material
  • Presentations at professional venues
  • Teaching
  • Library uses

◦ In Your Personal Life
  • Downloading music, film, images, etc. from the internet
  • Incorporating others’ works into yours, perhaps for sale
At the turn of the century [1900], U.S. copyright law was technical, inconsistent, and difficult to understand, but it didn't apply to very many people or very many things.

Then things changed, radically. Copyright now reaches across the spectrum of ways in which we engage in our culture.
Ninety years later, the U.S. copyright law is even more technical, inconsistent, and difficult to understand; more importantly, it touches everyone and everything. . .

Most of us can no longer spend even an hour without colliding with the copyright law.
For Example: Have You Ever

- **Posted** another’s work on your web site?
- **Modified** images you obtained from the web and claimed a copyright in them?
- Used music that you **bought** as background to your web site or presentation?
- Copied a **YouTube** video to show in class or in distance education?
- **Linked** to a web site without permission?
- Assumed that an **educational** use, properly attributed, justified any use of any work?
- **Streamed** an entire movie online?
Why Is Copyright Critical To Teaching?

- Quality of course dependent on
  - *Skill* of instructor
  - *Quality of course content*
- Quality content is often copyrighted
- Attribution does not obviate © issues
- Educational uses are not automatically permitted
Copyright: What Is It?

- Form of intellectual property protection
- Originates with U.S. Constitution which specifically sets forth its primary purpose:

“To promote the progress of science and the useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”
Balance of Interests
What Does Copyright Protect?

Or “How Do I Copyright My Work?"

Automatic: As soon as an *original* work is *fixed* in a tangible medium of expression

Publication or Registration is *not* required
Meaning that: Not Copyrightable

Facts/Ideas

Public Domain Works

Federal Govt. Works
Additionally:

- The copyright notice is no longer required for works published after 3/1/89
- Though optional, register with:
  - The US Copyright Office –

Copyright Notice = ©, “Copyright”, or Cpor., date, name

Allows for award of statutory damages [read “BIG BUCKS”] instead of proving “actual” damages

www.copyright.gov
## What Can Be Copyrighted?

<table>
<thead>
<tr>
<th>Literary Works</th>
<th>Motion Pictures</th>
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<tr>
<td>Musical Works</td>
<td>Sound Recordings</td>
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<td>Dramatic Works</td>
<td>Pantomimes</td>
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<td>Pictorial, graphic, sculptural</td>
<td>Architectural Works</td>
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How Long Does A Copyright Last?
Currently: Life of the author, plus 70 years
No particular life: 120 years from the date of creation or 95 years from the date of publication, whichever is shorter
Generally: Works published in the US before 1923 are in the public domain.
Other works MAY have fallen into the public domain, but it will take considerable research to determine.
What are your rights (exclusive) as copyright holders?

- To REPRODUCE the work
- To prepare DERIVATIVE works
- To DISTRIBUTE copies of the work
- To PUBLICLY PERFORM the work
- To PUBLICLY DISPLAY the work, directly or by telecommunication; and
- To PUBLICLY PERFORM a sound recording by digital transmission
Exclusive Rts = No use w/out permission

Remember the “Balance”?

© Law Built in Exceptions for society’s benefit
Exceptions We’ll Focus On

- Section 107: The Fair Use Doctrine
- Section 110: Performance and Display
Fair Use

- It is the important “safety valve” in our copyright system
- Supreme Court: Every work of “literature, science and art borrows, and must necessarily borrow, and use much which was well known and used before.”
- An exception to the monopoly control – allows uses of works – without prior permission of the © holder
- Is critical to political and cultural life
Popularly Heard Examples:

**It’s fair if:**

- It’s for educational use
- If I’m not making any money from my use
- If I bought the original (whatever), I can make a copy
- If I give proper credit to the author
- If I password protect my web site
- If I’m just making copies for my class
Again: What Is Fair Use?

- It is an analysis of four factors listed in the law; it is a good-faith “argument”
- It is not a list of amounts, percentages, or other comforting, bright-line rules.
- Then how will I ever be sure that my use is fair and I won’t be sued? You won’t but there is guidance available.
- But “When in doubt, get permission” is not the best advice & completely eviscerates fair use.
Preamble: The *fair use* of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as *criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research*, is not an infringement of copyright.
Four Fair Use Factors

- Purpose and Character of the Use
  - Including whether commercial or nonprofit educational
- Nature of the Copyrighted Work
- Amount and substantiality of portion used
  - In relation to the © work as a whole
- The Effect of the use upon the potential market for or value of the work

All four factors do NOT have to be in your favor to constitute a fair use
Purpose and Character

- Is the use nonprofit and educational?
- Is the use transformative?
Transformative
Nature of Work

- Nonfiction, factual focus or
- High level of creativity
Amount and Substantiality

- Amount is a sliding scale [GSU lawsuit]
- Substantiality – heart of the work
Effect on Potential Market

GIMME MY $$$$$$
Numerous aides available
Each case is different – very fact dependent
Reasonable people can differ
Good Faith
Section 504[c]2

- Court MUST remit statutory damages if it finds that:
  - The infringer believed & had reasonable grounds for believing that their use was fair; and
  - The infringer is an employee of a nonprofit educational institution, library, or archives; and
  - Was acting within the scope of their employment

- If you meet these conditions, this is a powerful defense as well as a deterrent to litigation in the first place.
May perform or display ANY work – wide open

But must be at a non-profit educational institution for face-to-face teaching activities in a classroom or place similarly devoted to instruction

This section does not address the reproduction that usually must precede the performance or display. You can generally rely on fair use for that. If the work resides on the web, you can also just display that web page.
What Can I Use Online?

- Section 110(2), otherwise known as the TEACH Act.
- Technology, Education, and Copyright Harmonization Act
- *Updates copyright law* for digital online education
- A compromise/balance
- An effort to bring the *digital classroom closer to the traditional classroom* in terms of performances and displays
Accredited Nonprofit Educational Institution or
Governmental Body (includes public libraries)

Performances of reasonable portions of movies or audio works or
Display of any other work in an amount comparable to that typically displayed in a live classroom setting
But Not

- Works produced or marketed primarily for performance/display as part of mediated instructional activities transmitted via digital networks or

- Unlawful copies (copies knew or reasonably should know were not lawfully made or acquired)
Conversion Analog to Digital

- Conditions:
  - *No digital version available* to the institution *or*
  - The available digital version is *technologically protected* to prevent TEACH uses
When Can These Works Be Used?

- By, at the direction of, or under the actual supervision of an instructor
  - As integral part of a *class session*
  - As part of *systematic mediated instructional activities*
  - *Directly related* and of material assistance to the teaching content
How Can They Be Used?

- **ACCESS CONTROL**: Transmission made solely for and reception limited to (as technologically feasible) students enrolled in the course.

- **DOWNSTREAM CONTROLS** instituted:
  - Technological measures that reasonably prevent—
    - Retention in accessible form for longer than the class session
    - Unauthorized further dissemination in accessible form
General Institutional Requirements

- Promulgate copyright policies *and*
- Provide accurate information about copyright *and*
- Promote copyright compliance *and*
- Provide notice to students that course materials may be copyrighted
More To The Point: Enhances

Opportunity

Creativity

Rights

Risk Management

Responsibility
Even Better: A POP Quiz! T/F?

- If I don’t register my work, it’s not protected.
- If there’s no copyright symbol, the work is free to use.
- I can use someone’s work as long as I don’t make any money.
- If I’m using someone’s work for school, it’s OK.
- If I alter an image so much that you can’t recognize the original, then it’s ok and it’s mine now.
I can put my favorite songs on a cd for my friends.

I can post anything on a web site as long as it is password-protected.

If I didn’t know I was infringing, I’m ok.

I gave away my copyright (verbally), but I’ve changed my mind. Whose is it?

Permission is required before use of any copyright material.

Copyright infringement = plagiarism.
Questions?