COPYRIGHT ISSUES in TODAY’S ONLINE, HYBRID, and FACE-TO-FACE CLASSES

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WHICH IS A VIOLATION
OF COPYRIGHT?

• Copying *The Scarlet Letter* for my entire class of 90 students.

• Playing Taylor Swift's new hit song during a presentation to motivate my class.

• Digitizing one of the college library's DVD for an online class.

• Reusing a previous semester's course packet comprised of several research articles.
OVERVIEW

Learning Objectives

1. Determine whether a work of interest is considered part of the public domain.
2. Identify conditions for using copyrighted materials.
3. Identify and apply the criteria for fair use.
4. Demonstrate an understanding of the allowances provided by the TEACH Act.
5. Demonstrate an understanding for best practices in determining the application of copyright laws in an instructional setting.
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BASICS

What is the purpose of Copyright?

1. Promote the progress of knowledge
2. Protect authors and creators

Why do we care about Copyright?
TO QUALIFY FOR COPYRIGHT PROTECTION

The work must be...

1. Original
2. Creative
3. In a fixed or tangible form of expression

© copyright all rights reserved
WHAT’S NOT COVERED

1. Ideas
2. Titles, slogans, phrases
3. Performances that are not recorded
4. Facts
5. Most works by the US Government
WHEN CAN WE USE SOMEONE ELSE’S WORK?

1. Permission for use of the work has been obtained from the original author.

2. Copyright has expired and the work is generally considered public domain.

3. Use of the work qualifies for the fair use exemption, or TEACH Act.
COPYRIGHT DURATION

- Starts from the moment the work is created
- Continues until 70 years after the death of the author (then public domain)

See [Public Domain Chart](#) (or use this [cool tool](#))
<table>
<thead>
<tr>
<th>Time of Publication</th>
<th>Conditions</th>
<th>Public Domain Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before 1923</td>
<td>None</td>
<td>In public domain</td>
</tr>
<tr>
<td>Between 1923 and 1978</td>
<td>Published without a copyright notice</td>
<td>In public domain</td>
</tr>
<tr>
<td>Between 1978 and Mar. 1, 1989</td>
<td>Published without notice and without subsequent registration</td>
<td>In public domain</td>
</tr>
<tr>
<td>Between 1978 and Mar. 1, 1989</td>
<td>Published without notice but with subsequent registration</td>
<td>70 years after death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation</td>
</tr>
<tr>
<td>Between 1923 and 1963</td>
<td>Published with notice but copyright was not renewed</td>
<td>In public domain</td>
</tr>
<tr>
<td>Between 1923 and 1963</td>
<td>Published with notice and the copyright was renewed</td>
<td>95 years after publication date</td>
</tr>
<tr>
<td>Between 1964 and 1978</td>
<td>Published with notice</td>
<td>95 years after publication date</td>
</tr>
<tr>
<td>After Mar. 1, 1989</td>
<td>None</td>
<td>70 years after death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation</td>
</tr>
</tbody>
</table>
RESOURCES AVAILABLE FOR USE WITHOUT PERMISSION:

1. Public Domain Resources (Columbia University Copyright Office)
2. Wikimedia Commons (all contents are licensed under Creative Commons Attribution/Share-Alike)
FAIR USE-
A LIMITATION ON EXCLUSIVE RIGHTS

1. Allows copyrighted materials to be used without permission
2. If certain criteria are met, copyrighted works may be used for
   • teaching
   • research
   • scholarship
   • criticism
   • journalism
   • parody
FAIR USE CRITERIA

- Purpose
- Nature
- Proportion
- Market Effect

A balancing act
PURPOSE

1. Commercial versus not-for-profit education

2. Transformative versus not

   1. the new insight that readers, listeners, or viewers gain from the parodic treatment of the original work (http://en.wikipedia.org/wiki/Derivative_work)

   2. “The use must … employ the quoted matter in a different manner or for a different purpose from the original … If … the secondary use adds value to the original — … the creation of new information, new aesthetics, new insights and understandings — this is the very type of activity that the fair use doctrine intends to protect for the enrichment of society.” (Toward a Fair Use Standard, by Judge Pierre N. Leval for Harvard Law Review in 1990)
PURPOSE

1. Copying clips of copyrighted material for a textbook that you are publishing, for which you will get paid.

2. Copying clips of copyrighted material for an open source textbook, for which you will not get paid.
Fiction/creative versus non-fiction


2. Copying a *New York Times* article from 1900 about the Boer War.

Facts are not protected by copyright.
1. Copying an article from the *Journal of Pure and Applied Physics* for your students.

MARKET EFFECT

More effect versus less effect

1. Copying a few chapters from a textbook for your students so that they don’t have to buy a required textbook.

2. Copying a few pages from a textbook to supplement the required reading in your class.
TO CLARIFY...
CIRCULAR 21

1. **Test of Brevity**  
   the percent of the work used is limited, depending on the type of work.

2. **Test of Spontaneity**  
   the decision to use the copyrighted work must not be pre-planned such that there isn’t enough time to ask for permission from original author.

3. **Cumulative Effect (of utilization of the copyrighted work)**  
   must not have a negative effect on the market.
EXCEPTIONS

1. Reusing the same copyrighted material semester after semester
2. Copying cannot substitute for the purchase of books, etc.
3. Students cannot be charged beyond the cost of copying.
4. Consumable works cannot be copied.
OTHER LIMITATIONS ON EXCLUSIVE RIGHTS

§ 110. Limitations on exclusive rights: Exemption of certain performances and displays

(1) Allows students and faculty to play entire videos or music in support of teaching activities within a face-to-face class.

(2) TEACH Act amends this portion of the law in relation to distance education.
DISCUSSION SCENARIO

An instructor has found an article in a professional journal that is particularly useful for a class she teaches every semester. She would like to include the article as reading this semester, and then again next time she teaches the course. Is this a fair use?

Purpose

Nature

Proportion

Market Effect

Spontaneity
I found an exercise worksheet from an activity book that is relevant to my learning objectives. I made enough copies for each one of my students. Although I don’t have permission from the original authors, I have given them full credit for using their work in a reference section.

Purpose
Nature
Proportion
Market Effect
Spontaneity
DISCUSSION SCENARIO

An instructor scans excerpts from journals, textbooks, and various other sources and creates PDF files of all of the readings. The instructor announces to the class that the readings will be available online at the course Canvas site.

Is this fair use?

Purpose
Nature
Proportion
Market Effect
Spontaneity
TEACH ACT (2002)

• Deals with digital “transmission” of copyrighted materials
• Supplements fair use exemption
• Focuses on the performance and displays of work within an online class environment
• More restrictive than what is allowed in a face to face class
• Provides guidelines as opposed to factors of evaluation (as compared to fair use).
RESOURCES THE TEACH ACT ALLOWS:

- Performances of non-dramatic literary or music works or display the following type of materials from semester to semester
  
  Examples:
  - sound recording of a poem, piece of literature, or symphony (NOT opera, musicals, plays)
  - still images or photographs
  - still images from subscription databases if allowed by license
  - text if something which would normally be “displayed” in a face to face class (NOT if it is something to read outside of class)

- Teachers may only display: “reasonable and limited portions” of dramatic works. Use only portions necessary to make a point or teach a concept. Use only those sources that are not available digitally for sale or license in the educational market:
  - Dramatic works (play, opera, musical, etc.).
  - Audio/visual works
  - Commercial films
  - Music Videos

While teachers in a face-to-face class can use these dramatic works in their entirety
WHAT THE TEACH ACT RESTRICTS THE USE OF:

- Materials commercially produced for the online educational market or already available digitally through other sources
- Unlawful or suspected copies of materials
- Transmission of supplemental readings
- Those materials students are expected to purchase (textbooks, course packs, workbooks, etc.)
- Copies over the fair use limits
SPECIFIC INSTRUCTOR REQUIREMENTS

When transmitting copyrighted electronic materials in your online course:

- The performance or display must be *directly related to the curriculum* or teaching content (*not supplemental to instruction nor for entertainment*)
- Available for a prescribed time period only, normally a *single class session*
- The performance or display is under the *supervision of the instructor*
- Instructors *must inform students* that the materials in the course may be protected by copyright
- Instructors should *limit access to the materials* to students in the class
- Should *employ protective strategies* in the transmission of these materials (thumbnails for images; streaming for media; making the content folder unavailable after the course session deadline has been met; etc.)
SPECIFIC INSTITUTIONAL REQUIREMENTS

- Institution must be accredited, non-profit educational
- Established copyright policies in place and inform students, staff, and instructors about them
- Utilize technologies and mechanisms that reasonably protect the redistribution of the materials performed or displayed (campus to campus differences here)
IMPACT ON TEACHING & INSTRUCTORS

- May now include portions of multimedia works relevant to instruction in your online course without permission *(applying the TEACH Act guidelines)*
- As with fair use, the instructor must apply the guidelines to the situation and use, to determine the use meets the requirements
- Instructors should document any analysis made using the TEACH Act
- Always consult the [MCCCD District Copyright policies](#) and/or District Legal before finalizing a decision
TEACH ACT
CHECKLIST:

☐ My institution is a nonprofit accredited educational institution or a governmental agency

☐ It has a policy on the use of copyrighted materials

☐ It provides accurate information to faculty, students and staff about copyright

☐ The materials I want to use are specifically for students in my class

☐ Only those students will have access to the materials

☐ The materials will be provided at my direction during the relevant lesson

☐ The materials are directly related and of material assistance to my teaching content

☐ My class is part of the regular offerings of my institution

☐ I will include a notice that the materials are protected by copyright

☐ I will use technology that reasonably limits the students’ ability to retain or further distribute the materials

☐ I will make the materials available to the students only for a period of time that is relevant to the context of a class session

☐ I will store the materials on a secure server and transmit them only as permitted by this law

☐ I will not make any copies other than the one I need to make the transmission

☐ The materials are of the proper type and amount the law authorizes:
  - Entire performances of nondramatic literary and musical works
  - Reasonable and limited parts of a dramatic literary, musical, or audiovisual works
  - Displays of other works, such as images, in amounts similar to typical displays in face-to-face teaching

☐ The materials are not among those the law specifically excludes from its coverage:
  - Materials specifically marketed for classroom use for digital distance education
  - Copies I know or should know are illegal
  - Textbooks, coursepacks, electronic reserves and similar materials typically purchased individually by the students for independent review outside the classroom or class session

☐ If I am using an analog original, I checked before digitizing it to be sure:
  - I copied only the amount I am authorized to transmit
  - There is no digital copy of the work available except with technological protections that prevent my using it for the class in the way the statute authorizes

(adapted with permission from Georgia Harper at the University of Texas at Austin. Copyright Crash Course, Copyright 2007 http://copyright.lib.utexas.edu/teachact.html)
FAIR USE? TEACH ACT? OR BOTH?

• Face to face class – fair use
• Online course – Start with TEACH Act focus regarding the digital transmission or display of works. If use is not addressed specifically in TEACH Act, fair use aspects of the situation may be used to justify it
• It’s up to you and your use and analysis to defend it
SOME SCENARIOS:

• **Video:** Chicano! Series – Instructor wants to include a portion from it in his/her online class on the LA student riots in 1968, as part of a mediated discussion (either in lecture or discussion board). Can it be streamed and provided for use in Canvas without obtaining permission?

  **Issues?**

• **Article:** I want to include an article as background reading for a lecture/module in my online course. Can I place a PDF in Canvas for students to read each semester? What about an excerpt from a work being discussed in class?

  **Issues?**
BEST PRACTICES

• In deciding upon materials to use in instruction, it is easiest if you find something without or with limited restrictions (public domain, Creative Commons, etc.)

• If you must use something and are not sure about fair use/TEACH Act possibilities, consider asking for permission (Copyright Clearance Center)

• If a copyright protected resource is important to your teaching of the class, see if it is available or a reasonable alternative through the college library (journal articles; streaming media)
BEST PRACTICES continued

• With articles, use persistent links to those available through fee-based library databases

• Less is more – really try to focus on those portions of a copyrighted materials actually needed to teach a concept or skill

• When providing access digitally in an online course or Canvas Resource page, try to protect it from being downloaded and redistributed (water marks, images at lesser resolution, streaming media, etc.)
Thank you

Contact us for questions

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