Copyright & Fair Use

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Overview

Copyright – What is it?

Fair Use – What is it?

Applying Fair Use in Education
Outcomes:
“At the end of this session I will”:

- Have an awareness of Copyright
- Have an awareness of Fair Use
- Have an awareness of tools to help determine if use is "Fair"
Copyright – What is it?

The U.S. Copyright Act sets forth in Section 102(a) that copyright protection vests immediately and automatically upon the creation of “original works of authorship” that are “fixed in any tangible medium of expression”.


Copyright Basics

• Copyright provides the creators of original works of authorship with a limited set of exclusive rights to copy, distribute, and perform their works (Section 106).

• Purpose: “to benefit the public by advancing the progress of science and the useful arts”
What is Protected?

- Literature
- Music and lyrics
- Drama
- Pantomime and dance
- Pictures, graphics, sculpture
- Films
- Sound Recordings
- Architectural works
- Software

Copyright and the “Open” Web

- Copyright applies to all types of materials (text, music, images, email, etc.) that might be posted on the Internet
- Copyright protection begins “the moment [that] ideas are expressed as keystrokes”
- The © symbol is not required of materials created after 1989; the absence of the symbol on a Web site does not suggest lack of copyright protection
- The right to appropriate Web-based materials (images, sound files, text) for use in your own course or Web site (i.e., to create a “derivative work”) is retained by the copyright holder
Who owns the Copyright?

- The creator of a new work is the copyright owner.
- Two or more authors working together may be “joint” copyright owners.
- The employer is the owner of a “work made for hire.”
- Copyright ownership may be transferred.

How Long Do Copyrights Last?

- Current law no longer requires formal notice or registration for copyright protection.
- Most new works are protected for the life of the author plus seventy years.
- Pre-1978 works required copyright notice to gain protection.
- Works published between 1923-1978 could have protection up to ninety-five years.
- Many foreign works have had their copyrights restored.
Obtaining Permission

If you are unable to meet the requirements for the exceptions, you can seek permission from the rights holder (usually the publisher). You may secure permission directly or through a licensing agent such as the Copyright Clearance Center (copyright.com). Most likely, fees will be involved.

Works without Copyright Protection

- Ideas and facts
- Works of the U.S. government (but state or local may)
- Various types of databases (such as a list of phone #’s)
- Works for which the copyright has expired
Is it still in copyright?

http://librarycopyright.net/digitalslider/

Common Copyright Exceptions

- Works in the public domain
- Works created “for hire”
- Works for which copyright has been transferred
- Fair use (Section 107)
- Classroom Copying Guidelines
  - Brevity: limits the amount copied per student
  - Spontaneity: Teacher initiated and “just-in-time”
  - Cumulative Effect: for use only in one course, the amount copied from one source
- Notice of Copyright
- Prohibits copying for purpose of non-purchase
What is Public Domain?

- If a work is within the public domain there are no ownership rights associated with it.

- Anyone may reproduce, redistribute, or adapt the work and there is no longer a need to seek permission for its use.

Section 109(a) – First Sale

Once the copyright owner authorizes the release of lawfully made copies of a work, those copies may be passed along to others by sale, rental, loan, gift, or other transfer.

Libraries function under this section; otherwise you would not be permitted to check out a book, video, etc.
Decoding the Language of Fair Use:

Limitations on exclusive rights:

Fair Use

So, copyright law isn’t just about locking things up. Not by all. Copyright also protects the rights of users and future creators. To encourage creativity, copyright law must strike a careful balance.
Section 107 – Fair Use

This provision is thought of as the “umbrella” exception. It is crucial for the daily success of teaching, learning, and research.

United States Code, Title 17, Section 107

Fair Use Principles: a closer look

- Fair Use is a balancing test
- Fair Use is highly fact sensitive
- Don’t reach hasty conclusions
- If your use is not within any of the exceptions, permission from the copyright owner is an important option
- Fair Use is relevant only if the work is protected by copyright
Notwithstanding the provisions of sections 106 and 106A, 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. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

(i) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
(ii) the nature of the copyrighted work;
(iii) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
(iv) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.


4 PRONGED TEST

- the purpose and character of the use;
- the nature of the copyrighted work
- the amount and substantiality of the portion used in relation to the copyrighted work as a whole
- the effect of the use upon the potential market for or value of the copyrighted work
There's no one right answer as to what constitutes a "fair use" of a particular copyrighted work. The answer varies from situation to situation.

A good point to consider is this: Have you made a "good faith" effort to comply with the "fair use" clause of U.S. Copyright Law?

<table>
<thead>
<tr>
<th>Weight of Evidence Favors Fair Use</th>
<th>Gray Area – Opinions May Vary</th>
<th>Weight of Evidence Does Not Favor Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scanning three pages of a 120 page book and posting it to Blackboard for one semester.</td>
<td>Scanning seven pages of a 120 page book and posting it to Blackboard for one semester.</td>
<td>Scanning an entire book and posting it to Blackboard.</td>
</tr>
</tbody>
</table>

If the scanned pages are not the “core” of the work in question, a favorable argument for “fair use” exists.

The amount exceeds established standards for acceptable amounts by one page (i.e. greater than 5%). However, courts are not bound by established standards and the Copyright Act contains no such standards. Opinions will vary.

Scanning an entire book clearly weighs against a finding of “fair use” as the entire work is used.

The difference between “fair use” and “infringement” of a copyright-protected work is not easy to determine. The burden of establishing a “fair use” is on the user and requires a very circumstance-specific analysis of the intended use or reuse of a work. Here are three examples that illustrate this challenge:
See WilmU Library LibGuide
Fair Use Checklist

- [http://libguides.wilmu.edu/content.php?pid=291847](http://libguides.wilmu.edu/content.php?pid=291847)

Licensed Information

- How you can use printed journals and books is governed by **copyright law**
  - Fair Use
  - First Sale
- How you can use (most) electronic databases, journals, and books is governed by a publisher’s **contract** with the subscribing library

Contracting for Access

- Subscriptions involve signing a license
- The license sets the business terms and the terms of use
- The license (or contract) overrides copyright law
- Libraries devote significant time to negotiating terms (but we can’t always get what we want)
Who is Covered?

- The license identifies “authorized users” of electronic resources.
  - Persons officially registered as full or part-time students in both degree and non-degree programs; faculty (including emeritus faculty) and other members of the teaching staff; administrators; and employed staff
  - Authorized affiliates (affiliated or visiting scholars or researchers, registered participants in outreach programs and internships, etc.) (cont.)

Who is Covered?

- Other users sponsored by Wilmington U. for guest accounts in order to complete academic or administrative work
  - Any of these at any location in the world, with appropriate authentication
  - All on-site (“walk-in”) users within the facilities of the Wilmington U Libraries
Section 110 (1) – Limitations on exclusive rights: Exemption of certain performances and displays

Allows instructors to show movies, play music, recite poetry, read plays, etc. all in the classroom setting. The only requirement is that the performance or display of the work must be part of the instructional activities (e.g. not for entertainment), and the faculty member must use a legally obtained copy of the work.

Section 110(2): Displays and performances in in the Online Environment

- Distance Education & The TEACH Act (2002)
  - Focuses on use of copyrighted materials in distance education
  - Expands section 110 on the range of materials that may be “performed” in the electronic environment
  - Expands eligible “receiving locations”
  - Requires that access to digital information be limited to currently enrolled students at the class level
  - Prefers “linking” to “storage”
  - Teach Act is not mandatory. Fair Use or Permissions are options.
What Does the TEACH Act Say?

- TEACH says it is not copyright infringement for teachers and students at an accredited, nonprofit educational institution to transmit performances and displays of copyrighted works as part of a course if certain conditions are met. If these conditions are not or cannot be met, use of the material will have to qualify as a fair use or permission from the copyright holder(s) must be obtained.

works that cannot be used....

- those works produced for the sole purpose of being used in distance education (i.e. an electronic textbook or a multimedia tutorial)
- required reading – textbooks, course packs, consumable workbooks
- unlawfully made copies
- If a digital version of the work is already available, then an analog copy cannot be converted for educational use
Instructor Oversight in Distance Ed Classes

- The instructor ultimately supervises the uses of copyrighted works
- The materials used serve educational pursuits rather than entertainment or other purposes.
- Limit access to enrolled students
- If students would ordinarily buy and keep the materials, that content should not be scanned and uploaded as part of distance education.

“If repurposing a work renders its use transformative, then arguably an educational use of a work created for a different market also is transformative.”

“Recontextualized” means the copyrighted work is integrated with other material (commentary, lecture notes, student responses, etc)

Must insure that the repurposing and recontextualization is not misused!
Scenario

Professor Tran teaches at a community college and wants to make photocopies of articles and book excerpts available for her students. Is she within fair use?


- Fair Use
- Infringement
- Purpose
- Amount
- Effect

Nature
Professor Tran & Fair Use

- Nature: Is the video a feature film or educational video? Is it highly creative or simple content such as news events?
- Amount: Are they brief clips? Is it the “heart of the work?” Is it the entire video?
- Effect: Is the film reasonably available for students to purchase at a low price? Is it made available by the Library?
Streaming at WilmU

- Digitalcampus.swank.com/wilmu
  - UN=wilmu123
  - PW=wildcats

Acting in Good Faith

- Learn and apply factors of Fair Use
- Use Fair Use Checklist
- Dialog with appropriate administrators
- Document and maintain records and notes
Educating the User

- Copyright and Intellectual Property
  - Copyright Tutorial Series (North Carolina State University)
    <http://www.lib.ncsu.edu/scc/tutorial/index.html>
  - Copyright Crash Course (University of Texas)
    <http://www.lib.utsystem.edu/copyright/>
  - Information Ethics Tutorial (University of North Carolina)
    <http://www.lib.unc.edu/instruct/infoethics/index.html>

For More Information

- Copyright
  - Copyright Management Center (IUPUI)
    http://www.copyright.iupui.edu/index.htm
  - Scholarly Communication Center – Tutorial Series (NCSU)
    http://www.lib.ncsu.edu/scc/tutorial/index.html
  - Copyright Information & Education
    http://www.lib.umn.edu/copyright

- DMCA and TEACH Act
  - DMCA (American Library Association)
    http://www.ala.org/ala/washoff/WOissues/copyrightb/dmca/
  - Distance Education and the TEACH Act (ALA)
    http://www.ala.org/ala/washoff/WOissues/copyrightb/distanceed/
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