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Copyright, Clickers, and Consensus

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Copyright, Consensus & Clickers

The background of the slide is a green chalkboard. In the lower-left quadrant, two pieces of pink chalk are lying on the surface. One piece is standing upright, and the other is lying horizontally next to it. There are several faint, white chalk markings on the board, including a large 'A' at the bottom, a curved line in the middle, and some other indistinct shapes.

Jonathan Bacon

Academic Director

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College

Channel Setting Instructions for *ResponseCard RF*

1. Press and release the "GO" button.
2. While the light is flashing red and green, enter the 2 digit channel code (i.e. channel 1 = 01, channel 21 = 21).

Channel is 41

3. After the second digit is entered, Press and release the "GO" button.
4. Press and release the "1/A" button. The light should flash yellow to confirm.

Disclaimer

- I am not a lawyer, have never been a lawyer, and have no intention of becoming one.
- This is for information and entertainment purposes only. The answers here are not intended as and are not lawyer-client advice.
- Take my advice, my opinions and my chili with a grain of salt.
- This information represents my research and my limited understanding of copyright law.

Definition of Copyright

- The Right to Copy
- “Copyright is a form of protection provided by the laws of the United States (title 17, U. S. Code) to the authors of “original works of authorship,” including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works.” ~ U.S. Copyright Office





Copyright Basics

- Considered Personal Property (can be sold, transferred, inherited)
- Automatic Protection when Work Created
- Original Works of Authorship § 102(a)
- Must Be in Fixed Form § 102(a)
 - *“Tangible Medium of Expression”*
- Doesn’t Cover Facts or Ideas
- Registration (Not required after March 1, 1989)

Copyright Notice ~ § 401(b)

- Copyright Symbol (© or Copyright or abbreviation Copr.)
- Year of First Publication (e.g., 2008)
 - *Year may be omitted for pictorial, graphic or sculptural works and accompanying text (if any) appears on cards, postcards, stationary, jewelry, dolls, toys, or any useful article*
- Name of Copyright Owner (or recognized abbreviation)



Authorship vs. Ownership

- Creator of Work Considered Author
- Ownership May Have Transferred
- Work for Hire § 101
- Owning Object ≠ Copyright

Term of Copyright

- First General Revision of Copyright Law, 1831
 - *28 + 14 Years with Renewal*
- Third General Revision of Copyright Law, 1909
 - *28 + 28 Years with Renewal*
- Title 17, § 302, 1976
 - *Life + 50 Years*
- The Sonny Bono Copyright Term Extension Act, 1998
 - *Life + 70 Years*
- What Really Matters
 - <http://www.lib.umn.edu/copyright/PDchart.phtml>

Protectable Works ~ § 102(a)

- Literary Works
- Musical Works
- Dramatic Works
- Pantomimes & Choreographic Works
- Pictorial, Graphic & Sculptural Works
- Motion Pictures & Other Audiovisual Works
- Sound Recordings
- Architectural Works



Public Domain

- Copyright Expired
- Dedicated by Author to Public
- Works Published before 1978, Failed to Meet 1909 Act Requirements
- Federal Government Produced (§ 105)





Copyright Holder Rights ~ § 106

- To Reproduce Works
- To Prepare Derivative Works (Adaption)
- To Distribute Works
 - *Sale, transfer of ownership, rental, leasing, lending*
- To Perform Work Publically
 - *Literary, musical, dramatic, dance, pantomimes, movies, audiovisual works*
- To Display Work Publically
 - *Literary, musical, dramatic, dance, mimes, and pictorial, graphic or sculptural works including individual images from movies & audiovisual works*
- Public Performance of Digital Sound Recordings

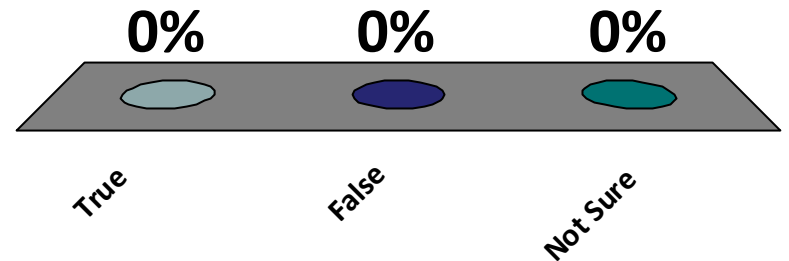


Ways to Use Works & Comply with Copyright Laws

- Is work protected by copyright?
- Qualify as “fair use?”
- Qualify under TEACH Act?
- If not, get permission from copyright holder.

Fair Use Means Fair to Use Any Copyright Materials in Instruction.

1. True
- ✓ 2. False
3. Not Sure





Fair Use Doctrine ~ § 107

- Statutory Basis in § 107, Title 17 (1976 Copyright Act)
- “...the fair use of a copyright work, including such use by reproduction in copies...for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research, is not an infringement of copyright.”
- “Equitable rule of reason”




Fair Use Factors ~ § 107

- Purpose and Character of Use
 - *Commercial vs. Not-for-profit*
- Nature of Work
- Amount & Substantiality
 - *Portion used in relation to whole*
- Effect on Potential Market


Limitations and Revisions

- 1976 Law Based Predominantly on Print Environment
 - *Few Electronic Works (computer programs, databases, mostly indexes)*
- Amendments to Title 17 Cover Digital
 - *Digital Millennium Copyright Act (DMCA) 1998*
 - *TEACH Act (Distance Learning Amendment) 2002*
 - *And More*



Fair Use Guidelines for Educational Multimedia 1996 (1)

- Joint Committee of Publishers, Artist Agents, Higher Ed. Reps. Developed
- Covers Not-for-profit Educational Uses
- Lawfully Acquired Copyright Works
- For Education Purposes in Systematic Learning Activities
 - *F2F Instruction*
 - *Directed Self-study*
 - *Over Institutions Secure Electronic Network in Real-time*



Fair Use Guidelines for Educational Multimedia 1996 (2)

- Multimedia Limitations
 - *Time (2 years max.)*
 - *Portion (10% or 3 minutes video; 10% or 1000 words; 10% < 30 seconds music; >5 images or photos per artist/photographer)*
 - *Copying & Distribution*
 - *Credit Sources*
 - *Alterations in Original Only in Support of Educational Objectives*

Student Submits Class Work (Essay, Artwork, Animation, and So On). The Work Is...

- A. Automatically copyright by the student.
- B. Copyright by the student if it includes a copyright notice.
- C. Owned by student, but can be used by class instructor for any educational purpose.
- D. Owned by the college under the “work for hire” concept.

0%

<input type="checkbox"/> Automatically cop...	<input type="checkbox"/> Copyright by the ...
<input type="checkbox"/> Owned by student,...	<input type="checkbox"/> Owned by the coll...



Copyright Holder Rights ~ § 106

- To Reproduce Works
- To Prepare Derivative Works (Adaption)
- To Distribute Works
- To Perform Work Publically
- To Display Work Publically
- Public Performance of Digital Sound Recordings



Copyright Holder Rights ~ § 106

- No copyright notice required,
- Copyright is automatic,
- No registration required.

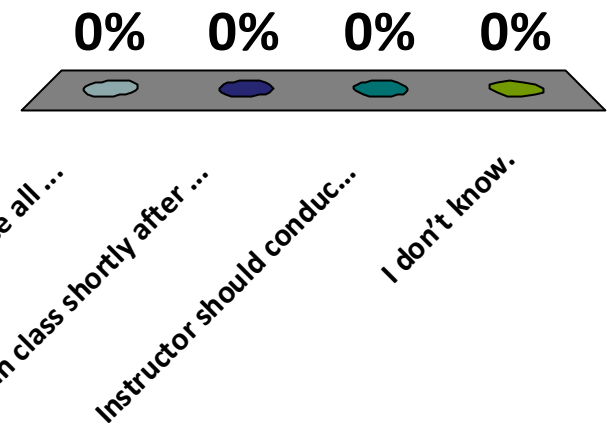
Specifically, Copyright Holder May...

- Transfer (in writing) or license some or all rights,
- Authorize derivative works,
- Control modifications to work,
- Determine commercialization of work,
- Control performances or displays of work,
- Authorize reproductions and transmissions of work.



Faculty Member Records News Broadcast at Home, Shows to Her Class.

- A. Use is illegal because all such programs are copyright.
- B. Use in class shortly after recording meets fair use guidelines.
- C. Instructor should conduct 4-factor analysis to see if fair use applies.
- D. I don't know.





Four factor Analysis to determine if use qualifies under fair use.

- Purpose & Character
- Nature of Work
- Amount & Substantiality
- Effect on Potential Market



Four factor Analysis to determine if use qualifies under fair use.

- Purpose & Character

- Nature

- Amount

- Effect

Nonprofit, educational, and personal uses are generally favored fair uses while commercial uses are less likely to be deemed fair use.



Four factor Analysis to determine if use qualifies under fair use.

- Purpose & Character
- Nature of Work

- Amount
- Effect

Factual works, published works and scientific articles (factual in nature) more likely considered fair use than creative, imaginative, artistic, or unpublished works.

A decorative background on the left side of the slide features a green chalkboard with two pieces of pink chalk and some white chalk markings. The top left corner has a small yellow icon with three vertical bars.

Four factor Analysis to determine if use qualifies under fair use.

- Purpose & Character
- Nature of Work
- Amount & Substantiality
- Effect

Excerpt, extract, clip or small portion (e.g. only part needed for educational purposes) more likely qualifies as fair use. Entire work or “heart of work” would not.


A decorative background on the left side of the slide features a green chalkboard with two pieces of pink chalk and some white chalk markings. The top left corner has a small yellow icon with three vertical bars.

Four factor Analysis to determine if use qualifies under fair use.

- Purpose & Character
- Nature of Work
- Amount & Substantiality
- Effect on Potential Market

Economic harm or diminished market for owner of copyright weighs against fair use.

Faculty Member Wants 2-Minute Segment of Video Tape Digitized, Burnt to DVD for Future Use

- A. Media Center staff will do anything you ask!
-  B. Instructor should conduct 4-factor analysis to see if fair use applies.
- C. Since segment < 10% of total work, it's legal under TEACH Act.
- D. Not spontaneous, fails to quality as fair use.

0%

<input type="checkbox"/> Media Center staf...	<input type="checkbox"/> Instructor should...
<input type="checkbox"/> Since segment < ...	<input type="checkbox"/> Not spontaneous, ...



Conditions Change, conduct 4-factor analysis for each subsequent use

- Purpose & Character
- Nature of Copyrighted Work
- Amount & Substantiality
 - *Segment is “Heart of the Work”*
- Market Effect
 - *Commercial version available*

Fair Use: The Tipping Point



Fair Use

Not Fair Use

Purpose and Character of Use

Nonprofit
Educational
Personal

Criticism
Commentary
News reporting
Parody

Commercial



Nature of Copyrighted Work

Factual
Published

Mixture of fact
And
imaginative

Imaginative
Unpublished

Fair Use



Not Fair Use

Amount & Substantiality of Portion Used

Small amount,
Not the “heart”
of the work

Large amount,
“Heart”
of the work



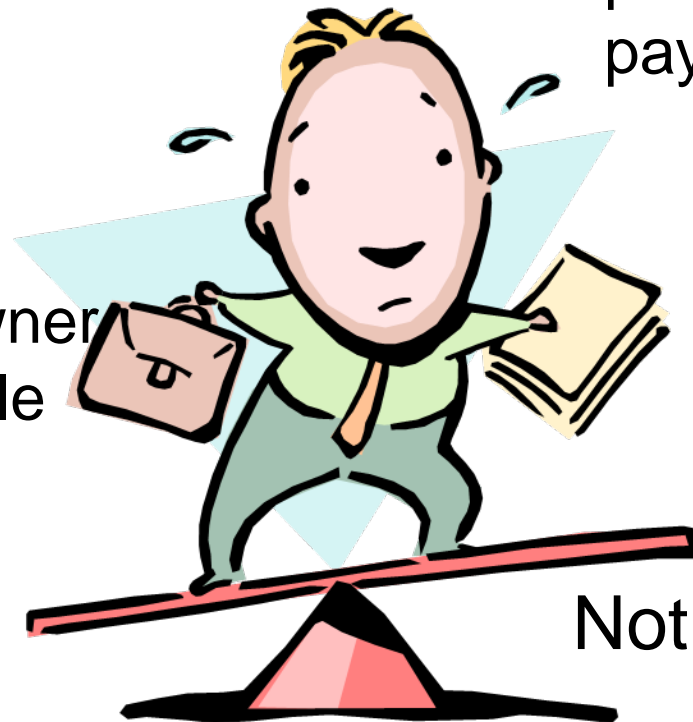
Effect of Use on Market or Value of Work

After first 3 factors,
if work tips toward
Fair Use

Original out of
print,
No ready
Permissions
Market,
Copyright owner
not identifiable

Competes with
sales of
Original,
Avoids
permissions
payments

Fair Use



Not Fair Use

Copy of Math Problem from Text (Not Adopted Text) for Class Handout or Online Use Violates Copyright?

A. True

B. False

✓ C. Not Sure

0%

True False Not Sure



Which Problem, How Many?

- Cannot copyright concept or idea.
- Factual vs. “creative” work?
- Portion of textbook copied?
- Effect on marketability of textbook?
- Brevity of quoted material?
- Conduct 4-Factor Analysis!

Instructor Copies Chapter, Uses in Class for Years. What Are Consequences?

- A. Compensatory damages by the copyright holder.
- B. Statutory damages of \$250 to \$150,000 (per willful violation).
- C. Criminal liability & jail time.
- D. All of the above. ✓

0%	0%	0%	0%
Compensatory damages by the copyright holder.	Statutory damages of \$250 to \$150,000 (per willful violation).	Criminal liability & jail time.	All of the above.



T.E.A.C.H. Act ~ Title 17, §110(2)

- Act Doesn't Alter Scope of Fair Use
- Fair Use Technologically Neutral
- Lack of Guidelines? Fair Use Still Applicable
- Provides for Transmission of DL Materials § 110(2)



What TEACH Act Does (1)

- Expands § 110 (Fair Use); Covers Synchronous and Asynchronous Digital Transmissions for DL
- Expanded Works
 - *Comparable to F2F Instruction*
 - *Limited Portions*
- Limitations (Uses not covered)
 - *Materials Produced/Marketed for DL use*
 - *Distribution of Illegally Obtained Copies*
- Accredited Nonprofit Educational Institutions or Govt. Bodies Only



What TEACH Act Does (2)

- Conditions of Permitted Use
 - *Directly Related to Teaching Content (Not entertainment)*
 - *Under Actual Supervision of Instructor*
 - *Part of Systematic Mediated Instructional Activities*
- Ephemeral Copies ~ Title 17, § 112 (f)
 - *Does Not Authorize Wholesale Conversion to Digital*
 - *Copies Only Retained by Institution for Fair Use Activities*
 - *Analog Works Digitized Only If Unavailable Free of Technological Protections*

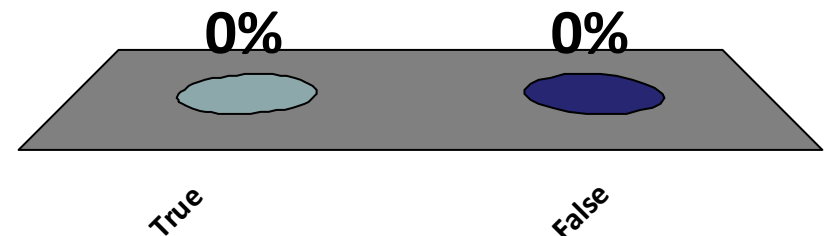


What TEACH Act Does (3)

- Conditions of Recipients
 - *Officially Enrolled Students*
 - *Technologically Limited to Permitted Recipients*
- Mandatory Preconditions
 - *Institutional Policies on Copyright*
 - Focus on Education
 - Notification of Copyright Ownership to Learners
 - *Technological Measures to Prevent Retention*
 - Encryption of Transmitted Content
 - Password Required

What TEACH Act Requires Instructors to Inform Students that Works in the Online Course Are Copyright Protected.


- A. True
- B. False





TEACH Act Requires Instructors to Inform Students that Works in the Online Course Are Copyright Protected.

- Copyright notice must accompany each work.
- Course must include general notice of copyright.



The materials on this course web site are only for the use of students enrolled in this course for purposes associated with this course and may not be retained or further disseminated.



Faculty Member Posts Book Excerpt on Her Personal Website for Class to Access. Protected by TEACH Act?

- A. Yes, portion comparable to amount used in F2F class.
- B. Yes, if not part of a commercial work sold for online use
- C. Yes, faculty member posts notice of copyright.
- D. No, access not limited to the just class.

0%



TEACH Act Checklist

- No commercial works designed for online instruction.
- No pirated or unlawfully made copies.
- Digital performance or display must be part of mediated instruction.
- Use software tools to protect access and prevent students from retaining.
- Notify students that works may be subject to copyright protection.

Using Work of Others in Instruction?

- Covered by Copyright?
- Covered by Fair Use?
- Covered by TEACH Act?
- If Not, Get Permission





The Reasonable Good Faith Fair Use Defense

- Employees of Nonprofit Institutions
- Reasonable, Good Faith Determination
- Court Must Remit Statutory Damages

Resources (1)

- U.S. Copyright Office and Copyright Law of the United States, see <http://www.copyright.gov/title17/>
- NewsNet, see <http://www.copyright.gov/newsnet/>
- Congressional Research Services, Copyright Exemptions for Distance Education: 17 U.S.C. § 110(2), the Technology, Education, and Copyright Harmonization Act of 2002, see https://www.policyarchive.org/bitstream/handle/10207/2893/RL33516_20060706.pdf?sequence=1

Resources (2)

- North Carolina State University Fair Use Worksheet, see <http://www.lib.ncsu.edu/scc/tutorial/copyuse/worksheet.pdf>
- Consortium of College and University Media Centers, “Educational Multimedia Fair Use Guidelines,” see <http://ccumc.org/system/files/MMFUGuides.pdf>
- The TEACH Toolkit, see <http://www.lib.ncsu.edu/scc/legislative/teachkit/background.html>

Resources (3)

- Copyright Term & the Public Domain in the United States, see <http://www.lib.umn.edu/copyright/PDchart.phtml>
- Fair Use Analysis Tool, University of Minnesota, see <http://www.lib.umn.edu/copyright/checklist.phtml>
- History of Copyright, see <http://www.copyright.gov/circs/circ1a.html>
- Fundamentals of Fair Use and Copyright, California State University, Office of General Counsel, see http://www.calstate.edu/gc/docs/fair_use.doc