

**Instructional Development Center
Professional Development Seminar
Series**

February 29, 2012

University of Central Arkansas

Conway, Arkansas

Copyright Essentials for Faculty

How to Use Copyright as a Tool to Effectively Support Teaching Efficacy

Jud Copeland

Department of Leadership Studies

College of Education

University of Central Arkansas

Do you really need to delve into copyright law?

What about intellectual property?

Quite simply, yes.

Copyright is everywhere and you probably come into contact with copyright issues a lot more often than you think. Do you send and read email? Browse the web? Watch TV? Listen to the radio? Use a photocopier in the library? Check out the day's events on your FarSide® calendar? Download music or files from Facebook, Twitter or YouTube?

All of these activities involve accessing or creating copyrighted works. What you or others may do with those works is governed by copyright law. You do not need to learn to recite every section of copyright law, but you do need to know the basic concepts to know how copyright protects your works and how to avoid getting into trouble for using someone else's work.

What is Intellectual Property?

Intellectual Property (I. P.) means any invention, discovery, improvement, copyrightable work, mask work for semiconductor chips, trademark, trade secret, and licensable know-how and related rights.

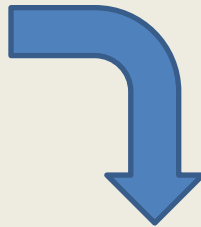
Intellectual property includes individual or multimedia works of art or music, records of confidential information generated by an educational, scientific or business entity, web pages, e-mails, data, texts, instructional materials, tests, bibliographies, research findings, organisms, cells, viruses, DNA sequences, probes, plant lines, chemical compounds, and theses.

The broad spectrum of intellectual property may be divided into 2 segments:

1. The well defined “classical” or statutory assets which include patents, trademarks, and copyrights and, more recently, mask works and registered designs.
2. The less defined contractual or “common law” assets comprised of trade secrets, “know-how,” and noncompetition agreements and confidential disclosure agreements.

The Big Three in Intellectual Property

- Patents
 - Trademarks
 - Copyrights
- The 3 “Tangibles”



What is Copyright?

The original term of copyright created by Congress in 1787. Copyright, as defined in the U.S. Constitution, is a right, reserved to authors for limited times. The purpose is:

“To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”

U.S. Constitution, Article I, Section 8

Intellectual Property and Copyright Laws and Acts

- Copyright Law of 1976 – Title 17
- The Berne Convention (1988)
- Net Theft Act (1997)
- Visual Artists Rights Act (1990)
- Digital Millennium Copyright Act (DMCA) 1998
- Sonny Bono Copyright Term Extension Act (CTEA) 1998
- Digital Performance Right in Sound Recordings (Act 1995)
- The Technology, Education and Copyright Harmonization Act (TEACH Act) 2002

What rights does an author own?

According to **Section 6 of the 1976 Copyright Law**, the author/creator of a work owns 6 specific rights:

- Reproduction
- Adaptation
- Distribution
- Public Performance
- Public Display
- Digital Transmission of Sound Recordings

These rights are considered property rights and they can be bought, sold, or licensed as a group or individually

How long does an author own the rights to his/her own work?

Since Congress passed the **Sonny Bono Copyright Term Extension Act** in 1998, the term of copyright protection for all new works and works under protection as the date of enactment is the life of the author plus 70 years.

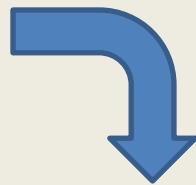
For works of “corporate authorship,” such as with a motion picture, the term of copyright is 95 years from the date of creation or 120 years, whichever comes first.

How does an author receive a copyright?

According to the **Berne Convention** (1988), notice of copyright is no longer required. Any item created in “tangible form” (written or typed on paper, painted on canvas, recorded on tape, or saved to disk) is *automatically* protected by copyright law. No longer is registration required to obtain a copyright. The process is automatic and instantaneous. No notice of copyright is required either.

Now...continuing with the 1976 Copyright Law...

Section 106 of the Copyright Law grants exclusive rights to copyright holders. Yet there are four sections of the 1976 law that are of particular interest to educators and librarians



A “Balancing Act”

Fair Use

When Congress established the rights of authors to their own works, they also acknowledged that students and researchers need to have access to otherwise protected works in order to build upon existing knowledge. To achieve this goal, Congress established the doctrine of **“FAIR USE”** (Sections 107-110).

- NOTE: Section 107 on Fair Use identifies four factors to be considered in determining whether or not a particular use is fair:
 1. The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes
 2. The nature of the copyrighted work
 3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole
 4. The effect of the use upon the potential market for, or value of, the copyrighted work

FAIR USE

The four fair use factors

- 1. What is the character of the use?**
- 2. What is nature of work to be used?**
- 3. How much of the work will you use?**
- 4. What effect would this use have on the market for the original or for permissions if the use were widespread?**

No one factor alone dictates whether a particular use is indeed Fair Use. Consideration of ***all*** four factors is needed to help determine whether or not copyright permission is required.

Before applying these factors to a particular situation, refer to Section 106 and identify if the use is for criticism, comment, news reporting, education, scholarship, or research. If the answer is **no**, then obtain copyright permission to use the content. If the answer is **yes**, then examine the four factors in Fair Use to make your decision.

Based on the specifications of the **1976 Copyright Law**, the distinction between fair use and infringement may be unclear and not easily defined. There is no specific number of words, lines, or notes that may safely be taken without permission.

Acknowledging the source of the copyrighted material does not substitute for obtaining permission (cf. citing the work and copyright permission or plagiarism and copyright infringement).

Copyright protects the particular way an author has expressed himself/herself. It does not extend to any ideas, systems, or factual information conveyed in the work.

The safest course is always to get permission from the copyright owner before using copyrighted material. The Copyright Office cannot give this permission.

The major copyright revisions of 1976 could not address **digital issues**. The Internet did not exist, and there were no **VCRs, PDF files, CDs, DVDs, mp3 files, HDTV** or **iPods** either. Even with this careful attempt at reason, the law is still being tested and is fraught with concepts that are subject to interpretation by the courts.

Publishers interpret the law one way, and educators may interpret it in another way, leading to potentially extreme responses on both sides.

Many people assume that online content, or content found on Web sites, is not subject to copyright law and may be freely used and modified without permission. Think about blogs, Facebook, Twitter, and YouTube. This is not true. Others may think that online content is not protected unless it carries a copyright notice. This is not true either.

Copyright law protects almost all content on the Web or in any other digital or electronic format. Therefore permission is most likely required to use that work beyond Fair Use.

The Digital Millennium Copyright Act

The **Digital Millennium Copyright Act** (DMCA) was passed into law in 1998 to address some of the issues unique to digital copyright. It also forbids the circumvention of technological protection measures.

Digital or electronic content, such as e-books, photographs on Web sites and electronic databases are subject to the same protections under the Copyright Act as non-digital, traditional or analog works.

What is protected by the **DMCA**?

- Any copyright-protected content in a non-digital form will also be protected in a digital form. Examples of copyright-protected materials include:
 - Print and electronic books
 - Analog and digital musical recordings
 - Print and e-mail letters
 - Web sites
 - Embedded works in Web sites

DMCA and the Electronic Environment

DMCA addresses issues related to methods of “reusing” copyright-protected digitized materials. These methods include:

- Scanning
- Using Content from a Web Site
- Posting Content to a Web Site
- Forwarding E-Mail
- Linking to a Web Site
- Electronic Discussion Lists, Bulletin Boards and Newsgroups

The TEACH Act

The **TEACH Act (Technology, Education, and Copyright Harmonization Act)**, signed into law Nov. 2, 2002, is an extension of DMCA focusing on the needs of teachers in the electronic environment. It addresses the off-campus use of digitized materials in Distance Education programs.

Primarily, the **TEACH Act** amended Section 110 (2) of the Copyright Law of 1976 which had applied mostly to closed circuit television environments and did not support the digital transmissions required in distance education programs.

The **TEACH Act** expands face-to-face teaching exemptions in the copyright law, allowing teachers and faculty to use copyrighted works in the “digital classroom” without prior permission from the copyright holder.

In effect, the **Act** sets up standards for use and distribution of educational materials to those enrolled in a class that is not held in a physical classroom. It attempts to update the “**Fair Use**” rules that were never designed for online or distance education.

The **TEACH ACT** allows nonprofit, educational institutions to transmit materials in a digital environment once certain definite restrictions are met. The **TEACH ACT** allows:

Transmitting performances of ALL of a non-dramatic musical or literary work

Transmitting “reasonable and limited portions of any other performance”

Transmitting displays of any work or still images

Teachers and librarians should be reminded that there are options to be explored outside of the **TEACH Act** which might apply to situations not covered:



Fair Use

1976 Revision of U. S. Copyright Law

Kastenmeier Report

United States Copyright Office *Circular 21*

First Sale Doctrine

Digital Millennium Copyright Act

Conclusion

Legalities Governing Digital Resources remain in a Tremendous and Complex Flux

Issues involve:

- Case law studies and court decisions/precedents

- The beliefs of copyright owners

- The practices of users

The Electronic Environment Offers New Opportunities to Make Works Conveniently Available and to Use Others' Works in New Ways

But Technology and the Change it Brings Can Threaten the Balance that Enables Copyright Law to Fulfill its Purpose

- Teachers, Librarians and Patrons Must be Conscious of Their Activities and the Value of Works to their Owners
- Understand Copyright Policy, TEACH ACT, FAIR USE, School Policy, and the “risks of using others’ works”
- Use good judgment
- Establish Connections to Licensing Collectives
- Make it easier for patrons to get permission when they need it

Visit Georgia Harper’s Copyright Crash Course for Online Copyright Support

- **When in Doubt, Obtain Permission!**

References and Links

Copyright Clearinghouse Center <http://www.copyright.com/>

Copyright and Fair Use Guidelines for Teachers www.techlearning.com

FAQS about Copyright

C:\Documents and Settings\UCA\Desktop\FAQ about Copyright -- Chilling Effects Clearinghouse.mht

Georgia Harper's Copyright Crash Course

<http://www.utsystem.edu/OGC/IntellectualProperty/Cprtindx.htm>

Introduction to Copyright and Intellectual Property issues

<http://www.nicholls.edu/library/under.htm>

References and Links

Poltorak, A.I. & Lerner, P.J. (2002). *Essentials of intellectual property*. New York: John Wiley & Sons.

Public Domain www.unc.edu/~uncclng/public-d.htm

Simpson, C. (2005). *Copyright for schools: A practical guide* (4th ed.). Worthington, OH: Linworth Publishing.

Simpson, C. (2008). *Copyright for administrators*. C. Weiser (Ed.). Columbus, OH: Linworth Publishing.

Simpson, C. (2005). *Copyright catechism: Practical answers to everyday school dilemmas*. Worthington, OH: Linworth Publishing.

U.S. Copyright Office www.copyright.gov

United States Copyright Office *Circular 21*

Copyright and Fair Use Guidelines

What can I copy for teaching purposes?
How much of a resource may I copy?

Sources: United States Copyright Office *Circular 21*; Sections 107, 108, and 110 of the Copyright Act (1976) and subsequent amendments including the Digital Millennium Copyright Act; Copyright and Fair Use Guidelines for Teachers (www.techlearning.com); the Kastenmeier Report; and *Fair Use Guidelines for Educational Multimedia; cable systems (and their associations)*. NOTE: There may be situations where the guidelines do not address the issue of copying yet teachers and students may be able to do so under the criteria of Fair Use.

Printed material

- Poems of less than 250 words
- 250-word excerpt of poem greater than 250 words
- Articles, stories, or essays less than 2,500 words
- Excerpt from a longer work (10 percent of work or 1,000 words whichever is less)

Printed Material

- One chart, picture, diagram, or cartoon per book or per periodical issue
- Two pages (maximum) from an illustrated work less than 2,500 words (e.g., a children's book)

Teachers may make multiple copies for classroom use, and incorporate copies into multimedia for teaching classes. Students may incorporate text into multimedia projects. Copies may be made only from legally acquired originals. Only one copy allowed per student. Teachers may make copies in nine (9) instances per class per term. Usage must be “at the instance and inspiration of a single teacher,” i.e., not the directive from the district or administration. Do not create anthologies. “Consumables,” such as workbooks, may not be copied.

Printed Material (Archives)

- An entire work
- Portions of a work
- A work in which the existing format has become obsolete, e.g., a document stored on a Wang computer

A librarian may make up to three copies “solely for the purpose of replacement of a copy that is damaged, deteriorating, lost or stolen.”

Copies must include copyright information.

Archiving rights are designed to allow libraries to share with other libraries one-of-a-kind and out-of-print books.

Illustrations and Photographs

- Photograph
- Illustration
- Collections of photographs
- Collections of illustrations

Single works may be used in their entirety, but no more than five (5) images by a single artist or photographer may be used. From a collection, not more than 15 images or 10 percent (whichever is less) may be used. Although older illustrations may be in public domain and do not require permission to be used, sometimes they are part of a copyright collection. Copyright ownership information is available at *www.loc.gov* or *www.mpa.org*

Video (for viewing)

- Videotapes (purchased)
- Videotapes (rented)
- DVDs
- Laserdiscs

Teachers may use these materials in the classroom. Copies may be made for archival purposes or to replace lost, damaged, or stolen copies. The material must be legitimately acquired. Material must be used in a classroom or nonprofit environment “dedicated to face-to-face instruction.” Use should be instructional and not for entertainment or reward. Copying is OK only if replacements are unavailable at a fair price or not in a viable format.

Video

(for integration into multimedia or video projects)

- Videotapes
- DVDs
- Laserdiscs
- Multimedia encyclopedias
- QuickTime Movies
- Video clips from the Internet

Students “may use portions of lawfully acquired copyright works in their academic multimedia,” defined as 10 percent or three (3) minutes (whichever is less) of “motion media.” The material must be legitimately acquired: a legal copy (not bootleg) or home recording. Copyright works included in multimedia projects must provide proper attribution to copyright holder.

Music

**(for integration into multimedia
or video projects)**

- Records
- Cassette tapes
- CDs
- Audio clips on the Web

Up to 10 percent of a copyright musical composition may be reproduced, performed, and displayed as part of a multimedia program produced by an educator or students.

A maximum of 30 seconds per musical composition may be used. The multimedia program must have an educational purpose.

Computer Software

- Software (purchased
- Software (licensed)

Library may lend software to patrons. Software may be installed on multiple machines, and distributed to users via a network. Software may be installed at home and at school. Libraries may make copies for archival use or to replace lost, damaged, or stolen copies if unavailable at a fair price or if not in a viable format. Only one machine at a time may use the program. The number of simultaneous users must not exceed the number of licenses; and the number of machines being used must never exceed the number licensed. A network license may be required for multiple users. Be sure to carefully monitor that copying is not taking place (unless for archival purposes).

Internet Connections

World Wide Web

- Images may be downloaded for student projects and teacher lessons.
- Sound files and video may be downloaded for use in multimedia projects (refer to Video and Music restrictions above)
- Resources from the Web may not be reposted onto the Internet without permission. However, links to legitimate resources can be posted.
- Any resources you download must have been legitimately acquired by the Web site.

Broadcast (e.g., ABC, NBC, CBS, UPN, PBS
and Local Stations

Cable (e.g., CNN, MTV, HBO)

Videotapes made of Broadcast and Cable
TV Programs

- Broadcasts or tapes made from a broadcast may be used for instruction.
- Cable channel programs may be used with permission. Many programs may be retained by the teacher for years. Refer to Cable in the Classroom (www.ciconline.org) for details.
- Schools are allowed to retain broadcast tapes for a minimum of 10 school days. (PBS's *Reading Rainbow*, allows more time).
- Cable programs are technically not covered by the same guidelines as broadcast television.

Let's refer to the **Handouts**
for this session...