

Intellectual Property, Copyright and Fair Use: What Students Should Know

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Please Note:

The information provided in this presentation is for your information and guidance only and may not be construed as legal advice. If you have specific issues or areas than need clarification, you are encouraged to consult with a qualified attorney.

Objectives

1. Provide the background to help insure that faculty and students have appropriate information and resources about the use of intellectual property and copyrighted materials during their experience at the university. Basic areas include:
 - a. Knowledge of the basic concepts and principles of intellectual property, and the property rights attached to intellectual property.
 - b. Knowledge of the concepts of 'Moral Rights' and 'Fair Dealing ' and why we should look at copyright infringement as hard as plagiarism.
 - c. The ability to distinguish the legal implications of between personal, educational and commercial uses of protected works.
 - d. The principles of Fair Use and how they apply in faculty and student usage.
 - e. The student's property rights in relation to coursework, internships, and employment at the university.
 2. Discuss the faculty member's role in this effort, as a guide and a role model for ethical behavior.
 3. Describe the resources available for teaching students about IP and copyright issues
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A Little Background

Copyright has a relatively short history compared to other laws, and it helps to understand how our Copyright Law developed. Understanding how the law protects private interests, while it restricts some freedoms is important to help us accept the law, and perhaps understand the real issues. Some highlights:

- **The Statute of Anne, 1710:** Codified author ownership and established copyrights for a term of 14 yrs., plus one renewal term.
- **U.S Constitution, 1787:** Established the basic premises of protecting the rights of the author for limited times and ensuring public access to 'useful information.'
- **Copyright Act of 1790:** Established basic tenants of copyright law, based on British model, and the established the term of 14 yrs. plus one renewal.
- **1870 Revision:** Removed administration of copyright law from local courts and placed it within the Library of Congress.
- **1909 Revision:** Extended the copyright terms to 28 yrs. and one 28 yr. renewal.
- **Copyright Act of 1976.** The last major revision of the laws. Established a new copyright term: the life of the author, plus 50 years.
- **1998 Berne Convention** Brought U.S. Copyright Law closer to international practice. Eliminated the requirements for copyright marking.
- **1992 Amendment to Title 17 Section 304:** Renewal of copyright became automatic.
- **1998 Copyright Term Extension Act:** Major blow to Public Domain, extended the copyright term to life of the author plus 70 years, or 95 years from publication for works made for hire.

This doesn't address the additional acts, guidelines and other clarifications, guidelines, and a wealth of case law that sets precedents for and against specific issues. It does illustrate a continuing need to find a balance between protecting author rights - and ensuring the public access to and use of 'valuable' information.

Why Your Students Need To Know About Intellectual Property And Copyright

During the course of our university experience, we get involved with copyright and intellectual property issues the three major ways:

- In response to course work students produce papers, projects, presentations, web sites, art works, videos, multimedia, and music performances- all of which are made richer, more interesting and more effective by the judicious use of quotations, visuals, media clips and other copyrighted resources drawn from the real world.
 - As result of their learning and experience, students will produce original and creative works that have value for personal use, portfolios and perhaps for or future commercial use.
 - A large percentage of students will work for academic or administrative departments as student employees, interns, teaching or graduate assistants. Many of our students are
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employed full or part time at businesses outside the university. In both situations, they may be involved in creative development of products that are worth protecting.

As a result, students need to understand the basic concepts and principles behind intellectual property and the legal methods employed to protect those products from unauthorized use. Students also need to understand that there are significant differences in how they can use protected materials for personal purposes, in the context of academic course work, and in commercial contexts.

Just as we strive to help student understand that plagiarizing written works is dishonest, we need to help them appreciate that outside certain limited conditions- unauthorized appropriation of non-text material is illegal. The use of copyrighted photographs, drawings, charts, video, audio, software, animations and other types of creative products outside those narrow boundaries, is not just unethical. **Copyright infringement is against the law and it can lead to criminal charges.**

One of the greatest dangers is that students will carry misinformation or careless behavior from personal uses to professional use beyond the campus. Attitudes such as ' I don't think there's anything wrong. ' 'Everyone else does it.' 'It isn't really hurting anybody.' or ' They won't catch me.' will create major difficulties if they are carried over into the workplace.

What Do Students And Faculty Need To Know?

To protect ourselves and understand copyright issues inside and external to academe, we need to know the basics about:

- Intellectual property and the legal measures used to protect it: copyright, trademarks, service marks, trade secrets, and patents.
- Who owns intellectual property, and what rights are reserved in the roles of student or employee.
- Specifics about copyright: what can be copyrighted, what those rights are, the terms of copyright protection and the meaning of 'public domain'.
- The meaning of Fair Use' and how it applies to our work and to students.
- How to research copyrights and how to request permission to use copyrighted material.

Students also need to know that the common responses they hear all around them are not accurate or realistic:

- If it's available on the web, it's free for anyone to use.
 - I'm a student; it's for a class assignment- so I don't need to worry about it.
 - If it's not marked with a © it isn't copyrighted.
 - Everyone else does it.
 - I paid for it, so I can use it wherever and however I want.
 - They won't catch me.
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Basic Terminology/Concepts

There are basic terms and concepts we need to be familiar with in order to work with intellectual property and copyrighted material; and be on firm legal footing. More detailed information about these items can be found using the resources cited at the end of this handout.

- **Intellectual Property:** The intangible value we place on original, creative work: the ideas and concepts, and the physical things that represent that effort. Inventions, songs, paintings, formulas, designs, and the models, recordings, products etc. that result from or represent the creative effort.
 - **Copyright, Trademark, Service Marks, Trade Secret, Patent:** The property rights assigned by law to protect intellectual property. Copyrights and patents are the most familiar, but we see trademarks and service marks all around us, and the trade secret is often used as a marketing device.
 - **What Can Be Copyrighted?** Fiction or non-fiction writings, photographs, drawings, models, designs, software, formulas, performances and recordings of dramatic or musical works - nearly any work of intellectual expression; as long as three conditions are met: 1.) It is original, 2.) It includes a degree of creativity, and 3.) It is in a fixed format. Facts, data and other non-creative expression cannot be copyrighted- but the 'expression' of those facts, in a chart or graph for example, may be.
 - **The 4 Rights in Copyright, "All Rights Reserved".** Copyrights include: the right to reproduce, distribute, display or perform the work in public, and the right to create derivatives of the original work. Rights may be unbundled. '*All rights reserved*' means just that.
 - **Infringement, Contributory Infringement.** An infringement is any action, deliberate or unknowing, that violates the rights protected by copyright, without permission of the owner. If your actions make it *possible for someone else to infringe* a copyright, you could be charged with contributory infringement.
 - **Who Owns the Rights?** Typically, the author or creator alone owns the copyright. If there are multiple authors they share the copyrights. Copyrights can be given away, sold or negotiated as part of a contract.
 - **Works Made for Hire.** The employer owns all copyrightable or patentable works created by employees within the *scope of work* defined for the job. Commissioned works, and those commissioned as part of a collective work are works for hire. Written contracts and agreements may stipulate the employer's ownership of the work.
 - **Term of Copyright.** The law defines the period that copyright remains in effect. For individual works, the term is for the life of the author plus 70 years. For works for hire, the term lasts for 95 years from the first date of publication. As a good rule of thumb: assume that any individual work created after 1923 and any commercial works published after 1908 will still be under copyright.
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- **Fixed Works.** Works are not copyrightable until they are expressed in a format that is tangible or accessible for others to read or use. Copyright is automatic upon 'fixing the work'. Registration with the Copyright Office is not required.
- **Copyright Marks.** The use of copyright marks: the symbol © or the long format - *Copyright 2004, John C. Jones* are no longer required. The absence of copyright marks does not mean the work is free to use.
- **Public Domain.** Works in the public domain are free to for anyone to use without limitation. Works go into public domain when: 1) The original copyright expires and has not been renewed, or 2.) When the original author clearly designates the work for public domain. Certain government works (but not all) also are designated for the public domain. However- the *published versions or editions of works* in the public domain are copyrighted. This caution is particularly important for works of fiction, art, music, etc.
- **Fair Use, the Fair Use Test.** Fair use is a principle in Copyright Law that provides us with a limited ability to use copyrighted material without getting permission for limited purposes: personal use, non-profit uses, education, criticism or commentary, news reporting and parody. There are no hard rules to determine if an intended use is a Fair Use, but there are 'test criteria' to help in making the decision:
 1. What is the purpose and character of the intended use?
 2. What is the nature of the copyrighted work?
 3. How much of the work will be used? And how important is that part?
 4. How would widespread use of this work impact its market value?
- **Getting Permission- Why? When? And How?** Why? To avoid the effort and expense required to defend against an infringement claim. You should get permission anytime you want to use work in a way that does not 'fit' the criteria for Fair Use or there is a strong likelihood the material will be incorporated in a work for commercial distribution. The U.S. Copyright Office has resources to help you research and request permissions.

Context of Use

Moving from home to the campus is a transition, and freedoms, habits and beliefs are part of the baggage we bring with us when we enter the world of academe- as student, staff or faculty. After a period on campus, we undergo another transition, from an educational setting in which we enjoy some extra freedoms and privileges to the work world – which has more stringent requirements. One of those transitional issues relates to our perceptions and understanding about our ability to make use of copyrighted materials in those three settings.

Personal Use Beliefs about what we are permitted to do with 'our property' are deeply embedded. We have no doubt that when we purchase or acquire something; it is ours to do with as we please. We purchase a book, read it, give it to a friend, sell it in a yard sale, and donate it to a book drive or discard it without thinking anything of it. That's common practice. The problem is that it fosters a feeling that we can do the same with any other products we purchase, so we copy music CDs, burn disks from downloaded music and video files, mount software on our desktop and our laptop, download the great things we find on the web, etc., all of the while overlooking an important fact. Most of these actions are acceptable **when limited to your personal use**, but the moment you burn a 'copy' to give to a friend, or post the file to a web site to share with others; **you are infringing on the**

copyright and have broken the law. Simply put: purchasing (or licensing) an item does not include any copyrights for that item.

Educational Use When we come to the K- 16 and higher education settings, faculty and students are granted under copyright law, some additional rights to use copyrighted material, without getting permission from the copyright owners. The generic term Educational Fair Use refers to the rights instructors have to copy articles, display photos or artwork, films, etc., for classroom use without seeking permission from the copyright owner. Fair Use also permits use of copyrighted material in multimedia, web sites, online courses and other instructional products under certain conditions and limitations. Students also enjoy some similar rights when completing course assignments and assembling portfolios. These rights are limited to non-profit educational purposes. Those types of uses may not be continued outside the academic environment, except for portfolio purposes.

Commercial Use In personal consulting or other for-profit, non-educational activity, your uses of copyrighted material are no longer governed by the tenets of personal use or Educational Fair Use. Actions seen as acceptable personal use and educational uses are highly unethical and illegal in a for-profit, commercial setting. Using someone else's copyrighted work in an activity that produces income or increases sales, without getting permission or licensing the material is illegal. Copying, redistributing or otherwise depriving the copyright owner of potential revenue carries significant penalties. In fact the majority of case law dealing with copyright infringement comes from the commercial sector.

As educators – we need to acknowledge the differences and be prepared to adapt our behaviors to the situation. We need to prepare our students to do the same.

Moral Rights

Moral Rights refer to expectations common to everyone and have no relation to morality. They address common expectations related to the uses of copyrighted work and the reputation of the author/creator:

Rights of Attribution Authors have the right to expect to receive clear and prominent recognition and acknowledgement of their work if the work is reproduced or used in another context. We are very clear on our expectations about giving appropriate citations for text materials. That expectation should be extended to any copyrighted non-text material: charts, graphs, photographs, artworks, audio or video clips, websites, etc.

Rights of Integrity Authors have the right to expect to that their original works be not subject to derogatory treatment, or other actions that modify, or disrupt the original intent and purpose of the work. This does not preclude the use of copyrighted works as the subject of critiques, satire or parody, but such transformative works should be tempered by objective criteria that are not prejudicial to the integrity of the author or the work.

Fair Use and 'Reasonable Good Faith'

We discussed the basic concepts of Fair Use and the test criteria to help you decide whether or not a specific use can qualify as Fair Use. Faculty and students may use portions of copyrighted materials in teaching products, course assignments or projects, but there are specific limitations. In addition to

the basic criteria used to make the decision: (nonprofit educational use, nature of the work, the amount and importance the portion and the market impact) you need to be aware and make sure students understand that there are restrictions on how and how long they may use those materials without getting permission.

Limitations and Restrictions

- **Faculty** may use portions of copyrighted material without seeking permission, within the parameters for quantity and relevance
 - In classroom instruction, self-directed study, and distance/online learning.
 - For a period of up to 2 years from the first instructional use.
 - Subsequent to that period, they may only use the material for portfolio purposes or for presentations at professional meetings as illustrations of their works.
 - Faculty may make one use copy and one archival copy, to hold in a portfolio.
 - They must include attribution and acknowledge of the copyrighted material in the product.

Any use beyond those limitation and time periods requires permission for each copyrighted element.

- **Students** may use portions of copyrighted material without seeking permission, within the parameters for quantity and relevance:
 - In projects and produces created in response to assignments in a course.
 - For only the course term for which those products were created.
 - Subsequent to that period- they may only use the material in portfolios as examples of their work.
 - Students may make one use copy and one archival copy, to hold in a portfolio. (All students in a team or group project qualify.)
 - They must include attribution and acknowledge of the copyrighted material in the product.

Any use beyond those limitation and time periods requires permission for each copyrighted element.

Reasonable Good Faith Effort

Fair Use decisions are subjective and they are made on a case-by-case basis. As a result they are subject to interpretation and they can be challenged. How should you prepare for that possibility? First of all- be realistic and honest with yourself, and secondly, make a reasonable good faith effort to comply with the laws.

- If the use you are thinking about seems fair, document the thinking process that led to that decision.
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- If the use feels questionable from the start, or quickly 'fails' one or more of the Fair Use criteria, get permission from the copyright holder.
- To get permission, research the copyright completely and identify the person or organization authorized to grant permission and submit your request.
- If you tried to get permission but could not locate the copyright holder or did not get a reply, document your search and the effort to get permission.

Making reasonable Fair Use decisions – and demonstrating reasonable good faith efforts are the strongest defense against an infringement claim.

Student Intellectual Property Rights

Of course students have IP rights! The Copyright Laws defining ownership reserve the intellectual property rights for a work to the individual author or creator of the work. That means all the works students create in response to course assignments, projects, or independent study and research are their property. This includes term papers, multimedia products, artworks, reviews, websites, performances, designs, and even contributions to online or recorded discussions. There is an implied consent in the student-faculty contract, that faculty members can copy, distribute or otherwise use the work *for the purposes of and within the context of the course*; but permission for any further use beyond the course and the course term should be obtained in writing.

Outside the course environment student works, or contributions may be covered under the concept of work for hire. In most cases, works created by students in the course of student employment, internships, and graduate assistantships could be considered works for hire. Works created in the context of research assistant, lab assistant or directed work as a student in funded research and development projects could be considered works for hire. In these instances the student's rights of ownership in the contributions or the final products, and their ability to use those materials for portfolio purposes should be clearly defined at from the start. Students should be informed and acknowledge the term of their involvement, possibly in a contract or work agreement.

References and Resources

Library of Congress, U.S. Copyright Office

<http://www.copyright.gov/> The 'official' source on intellectual property, copyright, patent and trademark law. Includes information about educational uses of copyrighted materials under the fair use provisions and subsequent agreements, and current status of copyright in digital resources and distance education. Also includes information, instructions and forms for registering copyright of original works.

“Copyright in the Electronic Environment for Students”

<http://www.utsystem.edu/OGC/IntellectualProperty/student.htm> This is a portion of the University of Texas System Copyright Management Center's Copyright Crash Course site, one of the most comprehensive resources about copyright in education. Hosted by Georgia Harper, one of the leading authorities on educational copyright issues.

"Pitt Digital Library Copyright Information FAQ ”

<http://www.library.upitt.edu/guides/copyright/faqanswers.html>

“Copyright: Ownership and Use”

<http://www.lib.ncsu.edu/scc/copyright/copyrightmenu.html>. North Carolina State University Library's resources on copyright and ownership. This site also offers an excellent tutorial on the TEACH Act.

“Timeline: A History of Copyright in the United States.” Association of College and Research Libraries. <http://arl.cni.org/info/frn/copy/timeline.html> Accessed March 30, 2003. This article outlines the history of copyright law in the United States, including court decisions and legislation that have changed in the law and copyright terms since the first Copyright Act of 1790.
