

COPYRIGHT AND FAIR USE

Blackboard System Admin Group

June 26, 2007

What is copyright?

A form of protection provided by federal law to the author of an *original work fixed in any tangible medium of expression* through which the work can be perceived or communicated.

17 U.S.C. Sec. 102

Sec. 102(a) Categories of Works of Authorship

- Literary works
- Dramatic works
- Pictorial, graphic & sculptural works
- Motion pictures & other audio visual works
- Musical works
- Pantomime & choreographic works
- Sound recordings
- Architectural works

But, not just any work of authorship . . .

- **Original** – Facts aren't protected. Factual compilations may be if there is originality in selection, coordination or arrangement of data.
- **Fixed in a Tangible Medium of Expression** – e.g., improvisational speech, a musical composition or dance choreography is not protected until written down, notated, recorded, etc.

What isn't covered by copyright?

- Facts
- Discoveries and ideas
- Works in the public domain
- U.S. Government works

Who owns the copyright?

- The Author: typically the creator of the work
- Multiple Authors: if two or more authors create a single work, it will be jointly owned
- Collective Work: copyright in collective work is separate from that in the individual contributions

Work-For-Hire (Sec. 101)

- Work prepared by an employee within the scope of employment
- Work that has been specifically ordered or commissioned for use as:
 - A contribution to a collective work
 - Part of a motion picture or other audio visual work
 - A translation
 - A supplementary work
 - An instructional text
 - A test
 - Test answer material
 - An atlas
 - Sound recordings
 - A compilation

A common misconception about work-for-hire

There is an exception for scholarly works.

What are the copyright owner's exclusive rights?

- Reproduce in copies or phonorecords
- Prepare derivative works
- Distribute copies or phonorecords
- Perform publicly. In the case of Sound Recordings, this right is limited to performing publicly by digital audio transmission (webcasting)
- Display publicly

When does copyright protection attach to a work?

- Immediately, automatically, upon fixation in a tangible medium of express
- Registration with the Copyright Office is voluntary, but gives owners the right to statutory damages and attorneys fees
- Use of a copyright notice is voluntary, but generally forecloses a defense of innocent infringement

How long does copyright last ? (U.S. Law)

- Works published before 1923 are in the public domain.
- Works created on or after January 1, 1978 are protected from the date when fixed for a term of life of the author plus 70 years (or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation.)
- See chart prepared by Laura N. Gasaway, Director of the Law Library and Professor of Law at the University of North Carolina
(<http://www.unc.edu/~unc1ng/public-d.htm>)

Copyright Infringement

Any exercise of a copyright owner's exclusive rights without the permission of the owner

Penalties and Remedies

Federal courts may:

- Issue an injunction
- Impound and destroy infringing articles
- Award actual damages and lost profits proven by plaintiff
- Impose criminal penalties for willful infringement
- In the case of registered works, award attorneys fees and costs. The copyright owner may also elect to receive statutory damages of between \$750-\$30,000 for any one work, and up to \$150,000 in case of willful infringement.

Innocent Infringer Rules

Sec. 504(c)(2)

- Court may reduce statutory damages to as little as \$200 if infringer was unaware and had no reason to believe that use was an infringement.
- Court shall remit statutory damages if the infringer thought that use of copyrighted material was a fair use AND the infringer was an employee of a nonprofit educational institution acting within the scope of employment.

Limitations on Exclusive Rights

Sec. 107 - 121

- Fair Use (Sec. 107)
- Reproduction by libraries and archives (Sec. 108)
- Certain performances and displays for educational purposes (Sec. 110)

Use in Face-to-Face Teaching

Sec. 110(1)

- Who:* teachers and students at nonprofit educational institutions
- What:* perform or display copyrighted works, including showing lawfully made copies of movies and videos, playing music, performing plays, showing art works, etc. in the course of face-to-face teaching
- Excludes:* photocopying of materials for classroom use, making course packs, on-line uses, and any other reproduction, distribution or making of derivative works

Transmission of Certain Works

Sec. 110(2) [TEACH Act]

Who: Accredited nonprofit educational institutions

What: Teachers and students may transmit (e.g., via the internet):

- the performance of ALL of a non-dramatic literary or musical work (poetry & short story readings, all music other than opera, musicals and music videos)
- REASONABLE AND LIMITED PORTIONS of any other performance (includes all audiovisual works, plays, opera, musicals and other dramatic musical works)
- displays of any work in AMOUNTS COMPARABLE TO TYPICAL FACE-TO-FACE displays (includes photographs and other still images)

Excludes:

- works produced or marketed primarily for use as mediated instructional activities transmitted via digital networks
- works the instructor knows or has reason to believe were not lawfully made or acquired
- textbooks, course packs and other materials in any media typically purchased by students for their independent use

Additional Conditions: The performance or display must be:

- A regular part of a systematic mediated instructional activity;
- Made by, at the direction of, or under the supervision of the instructor;
- Directly related and of material assistance to the teaching content; and
- For and technologically limited to students enrolled in the class.

Additional Conditions: CUNY must:

- Have policies and provide information to CUNY community about copyright;
- Give notice that the materials used in the course may be protected by copyright;
- Apply technological measures that reasonably prevent recipients from retaining the works beyond the class session and further distributing them;
- Not interfere with technological measures taken by copyright owners that prevent retention and distribution.

IN A NUTSHELL:

The TEACH Act is intended to cover classroom-type instruction delivered online. It does not cover materials an instructor may want students to study, read, listen to or watch on their own time outside of class. For these uses, the instructor must look to the principles of fair use.

FAIR USE

Sec. 107

“The fair use of copyrighted work for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research is not an infringement of copyright.”

Four Factor Test

Not all educational uses are “fair use.” Four factors must be considered:

- The purpose and character of the use
- The nature of the copyrighted work
- The amount and substantiality of the portion of the work used
- The effect on the potential market for the work

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