

# Copyright and Access Right: A Balancing Act

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# Copyright Overview

- © Why was copyright law developed in the first place?
  - To benefit the public by advancing the progress of science and the arts
  
- © What is copyright law?
  - A limited, statutory monopoly
  - Includes exclusive rights for copyright holders and exemptions for users (fair use, making copies, classroom use, etc.)
  
- © What is the public domain?
  - Materials not or no longer protected by copyright



# What can be protected by copyright?

© Original and creative fixed forms of expression – facts and ideas are not copyrightable.

© Protectable works include:

- Literary works
- Musical works
- Dramatic works
- Pantomimes & choreographic works
- Pictorial, graphic & sculptural works
- Motion picture & other audiovisual works
- Sound recordings
- Architectural works



# Copyright Holder's Rights

- © Right to reproduce in copies
- © Right to distribute to the public
- © Right to create derivative works based on the original
- © Right to display publicly
- © Right to perform publicly





# Limitations on Copyright

- © First sale (transfer of legally acquired copy)
- © Fair use
- © Photocopying for libraries and archives
- © Teaching exemptions (public performance and display)
- © Computer programs
- © And many more...





# Fair Use ( 107)

- © Allows that copyright can be infringed because strict application of the law is unfair or stifles creativity.
- © If your use is a fair use, you do not have to seek permission to use copyrighted materials, and you do not have to pay a fee or sign a license.
- © The Doctrine of Fair Use is included in the Copyright Act of 1976 and is based on the actual practices of the court system.





# Four Factors of Fair Use

- © Purpose and character of the use (non-profit education versus commercial use)
- © Nature of the material being used (factual or fictional in nature, degree of creativity, published or unpublished)
- © Amount and substantiality of the portion used in relation to the whole
- © Effect of the work on the potential market for or value of the copyrighted work
- © A Fair Use Checklist developed by copyright expert Kenneth Crews is located at <http://www.copyright.iupui.edu/checklist.pdf>





# Making Fair Use Decisions

- © Be consistent
- © Recognize that reasonable people can disagree
- © Push the envelope but still act in the spirit of the law
- © Remember that Fair Use is interpretative, and is the same process used by the court system.





# “Fair Use” Guidelines

- © Are not part of the copyright law
- © Do not protect you from liability
- © Are often used as maximum limits when they were originally meant as minimums
- © Mary Livermore Library’s “Fair Use” guidelines
  - [Course Reserves](#)
  - [Document Delivery](#)



# Multiple Copies for Classroom Use

© Part of Fair Use

© Additional factors considered:

- Brevity
- Spontaneity
- Cumulative effects
- Notice of copyright
- No charge beyond cost of copying

© Can't be used to create substitutes for anthologies, compilations, or collected works.



# What is infringement?

- © Use of whole or part of a work without permission in a way that is not covered by copyright exemptions
- © Use of materials beyond the scope of a license
- © Adapting a work without permission
- © Distribution of copyrighted works
- © Changing the medium of the work
- © And more...



# Digital Millennium Copyright Act of 1998

- © Amendment to copyright law
- © Underlying copyright concepts unchanged – only addresses new way to infringe copyrighted works
- © Controversial and flawed
- © Still being tested in the courts
- © Two key components
  - Online service provider liability
  - Copyright protection and management systems



# Copyright Protection and Management Systems

- © Anti-circumvention of technological measures
- © Cannot break an access control measure without authorization
- © Cannot use a circumvention tool to gain access
- © Cannot create circumvention tools
- © Criminal penalties
- © No fair use exemption



# Technology Education and Copyright Harmonization Act (TEACH)

- © No consensus was reached during the DMCA negotiations regarding exemptions for distance education
- © The U.S. Copyright office conducted a study favoring additional exemptions
- © After four years, a bill was introduced – the TEACH Act



# Key Provisions of TEACH

- © Expands 110 – exemptions for certain performances and displays
- © Expands 112 – ephemeral recordings
- © Mediated instructional activities include the digital classroom
- © For accredited non-profit educational institutions only
- © Requires the use of technological protection measures for copyrighted works





# Mediated Instructional Activities

- © Integral to class experience
- © Controlled by or under the actual supervision of the instructor (mediated instruction)
- © Analogous to the type of display or performance that would take place in a live classroom





# Works That Can Be Used Under TEACH

- © Non-dramatic literary works (charts, journal articles, maps, book chapters, some types of music, etc.)
- © Limited portions of dramatic literary works (plays, operas)
- © *Any work* in ways that would typically occur in the physical, live classroom (including audiovisual works like videos)



# Works That Can't Be Used Under TEACH

- © Those works produced for the sole purpose of being used in distance education
- © Required reading: textbooks , course packs, consumable workbooks, and other materials that would normally be purchased by students in face to face settings
- © Unlawfully made copies



# Transfers from Analog to Digital

- © Allowed for the TEACH Act and preservation purposes – but not allowed under Fair Use
- © Allowed when a digital format is not available
- © Allowed when a digital format cannot be used because of technological protection mechanisms
- © Copy only the portion necessary
- © Cannot share digitalized copy with other institutions
- © Cannot make digital copies of digital copies



# Institutional Obligations of TEACH

- © Be an accredited, non-profit institution
- © Copyright policy and accurate copyright educational materials are available to students and faculty
- © Promote lawful activity
- © Notify students that materials may be protected by copyright



# Technological Requirements of TEACH

- © Limit access to registered students to the extent technologically feasible
- © Reasonably prevent unauthorized copying and further distribution
- © Retain materials only as long as necessary
- © Do not interfere with technological measures employed by the copyright holder
- © No known technology is 100% effective, and is not expected to be
- © Do not overprotect if mechanisms threaten fundamental rights – intellectual freedom, privacy



# What about BlackBoard?

- © Built in features like passwords help
- © However...course management software ≠ way to circumvent paying royalties for course packs
- © Whatever materials are used in online courses should be similar to the materials used in analog courses
- © After one semester – permission should be obtained before the material is re-used
- © Linking to electronic resources is the safest



# What about course reserves?

- © TEACH does not apply
- © Are lawful
- © Other copyright exemptions apply – primarily Fair Use
- © Library determines Fair Use decision and pays any necessary copyright royalties



# Why bother?

- © Personal and institutional liability
- © Statutory damages from \$750 - \$150,000 per infringing act
- © Willfulness is a factor
- © Likelihood of a suit
- © Faculty need to model appropriate use of materials to students





# Additional Resources

© Mary Livermore Library Copyright Web Site

<http://www.uncp.edu/library/copyright/>

© UNCP Copyright Policy

[http://www.uncp.edu/aa/resources/policies/uncp\\_copyright\\_policy.pdf](http://www.uncp.edu/aa/resources/policies/uncp_copyright_policy.pdf)

© UNC System Intellectual Property Policies

<http://www.northcarolina.edu/content.php/aa/research/copyright/copyright.htm>



# Additional Resources

© American Library Association Copyright Resources  
<http://www.ala.org/Template.cfm?Section=copyright>

© The United States Copyright Office  
[www.copyright.gov](http://www.copyright.gov)

© Copyright Clearance Center  
[www.copyright.com](http://www.copyright.com)

© Google Advanced Search  
– Limit usages rights to “free to use or share”

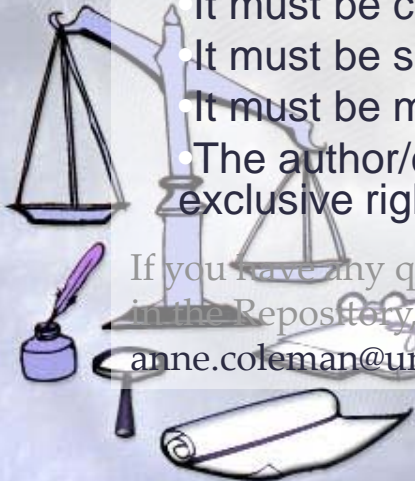


# UNCP Institutional Repository

In support of the research and teaching missions of the University, the Mary Livermore Library is launching an initiative to collect, preserve, index, and distribute the scholarly output of UNCP's faculty and to make it available to a global audience via the Internet. The goal of the Institutional Repository is to maximize the visibility and influence of faculty research. The works included in this repository will be deposited on behalf of individual faculty members and students on a voluntary basis. Content for the IR must meet the following criteria:

- Each work must be the intellectual property of a UNCP faculty member. (Exception – student research, theses, and dissertations will also be included in the *IR*.)
- It must be complete and in final form.
- It must be scholarly, research, or educational.
- It must be made available for global access at no cost via the Web.
- The author/creator of each work must grant to UNCP Libraries the non-exclusive right to preserve and distribute the work in perpetuity.

If you have any questions about the UNCP Institutional Repository or would like to participate in the Repository, contact Anne Coleman, Assistant Dean for Research Services, [anne.coleman@uncp.edu](mailto:anne.coleman@uncp.edu) (910-521-6837)





# Scenario One

- © A faculty member records a segment of the evening news on her home VCR and the next day shows the recording to her class. Afterward she selects a 2 minute clip from the segment to burn onto DVD for future classroom presentations.





## Scenario Two

- © In the attempt to save students money a professor scans several chapters from an expensive textbook for her course and uploads a PDF file of the chapters to her WebCT/Vista site for students to read. This is the only material the students need from this particular textbook to complete class assignments. Is this a fair use?





# Scenario Three

- © An instructor wants to create a copy of a documentary and post it to her password-protected course website for download.





# Scenario Four

- © An instructor scans excerpts from journals, textbooks, and various other sources and creates PDF files of all of the readings. The instructor announces to the class that the readings will be available online at the course Blackboard site. Is this fair use?



# Case continued...



Image from [http://media.komotv.com/images/stock\\_gavel\\_book.jpg](http://media.komotv.com/images/stock_gavel_book.jpg)





# Questions?



Image from [http://media.komotv.com/images/stock\\_gavel\\_book.jpg](http://media.komotv.com/images/stock_gavel_book.jpg)



# Thank you!