Copyright and the TEACH Act: a Discussion

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University of North Florida

November 30, 2007
What is copyright?

The exclusive right to the publication, production, or sale of the rights to a literary, dramatic, musical, or artistic work, or to the use of a commercial print or label, granted by law for a specified period of time to an author, composer, artist, distributor, etc.

What is copyright?

In the United States, copyright law protects the authors of “original works of authorship, including literary, dramatic, musical, artistic, and certain other intellectual works.” This protection covers both published and unpublished works, regardless of the nationality or domicile of the author. It is unlawful for anyone to violate any of the rights provided by copyright law to the owner of a copyright.

How Is Copyright Obtained?

- Automatic copyright
- Registration
  U.S. Copyright Office
  [http://www.copyright.gov](http://www.copyright.gov)
There are four ways to comply with the law:

1. Determine that the work is not protected.
2. Qualify under the TEACH Act.
3. Qualify for "fair use" of the work.
4. Get permission from the copyright holder.
Works Not Protected

- Works published before 1923
- Works published by US government
- Works where the copyright has been waived by the creator
- Works for which the creator allows use and dissemination of a work in certain cases (e.g., non-commercial purposes)

http://www.lib.ncsu.edu/scc/legislative/teachkit/copyright.html
Resources

- When U.S. Works Pass into the Public Domain
  
  http://www.unc.edu/~unclng/public-d.htm
TEACH Act

- Technology, Education, and Copyright Harmonization (TEACH) Act, 2002
  - Expands categories of works that can be performed in distance education
  - Removes concept of a physical classroom
  - Accredited, nonprofit educational institution
  - Institution must meet stringent requirements
WHO

Accredited nonprofit educational institution or governmental body

University of North Florida
TEACH Act Requirements

WHAT

- Performances of nondramatic literary works
- Performances of nondramatic musical works
- Performances of reasonable portions of any other work
- Display of any other work in an amount comparable to that typically displayed in a live classroom setting
TEACH Act Requirements

BUT NOT

- Digital educational works
- Copies of works not lawfully made

Not meant to be used to save $$!!
TEACH Act Requirements

WHEN

- By, at the direction of, or under the actual supervision of an instructor
- As an integral part of a class session
- As part of systematic mediated instructional activities
- Directly related and of material assistance to the teaching content
TEACH Act Requirements

HOW

- Transmission made solely for and reception limited to (as technologically feasible) students enrolled in the course
- Downstream controls – Technological measures that reasonably prevent:
  - Retention in accessible form for longer than a class session
  - Unauthorized further dissemination in accessible form
  - No interference with copyright holder’s technological measures that prevent such retention and dissemination
TEACH Act Requirements

CONVERSION ANALOG TO DIGITAL

Conditions allowing conversion:

- No digital version available to the institution OR
- Available digital version is technologically protected to prevent TEACH uses
TEACH Act Requirements

GENERAL INSTITUTIONAL REQUIREMENTS

- Promulgate copyright policies
- Provide accurate information about copyright
- Promote copyright compliance
- Provide notice to students that course materials may be copyrighted
TEACH Act Checklist

(all must apply)

☑ My institution is a nonprofit accredited educational institution or a governmental agency

☑ It has a policy on the use of copyrighted materials

☑ It provides accurate information to faculty, students and staff about copyright

☑ Its systems will not interfere with technological controls within the materials I want to use.

☑ The materials I want to use are specifically for students in my class

☑ Only those students will have access to the materials

☑ The materials will be provided at my direction during the relevant lesson

☑ The materials are directly related and of material assistance to my teaching content

☑ My class is part of the regular offerings of my institution

☑ I will include a notice that the materials are protected by copyright

☑ I will use technology that reasonably limits the students' ability to retain or further distribute the materials

☑ I will make the materials available to the students only for a period of time that is relevant to the context of a class session

☑ I will store the materials on a secure server and transmit them only as permitted by this law

☑ I will not make any copies other than the one I need to make the transmission

Based on checklist on the UNF General Counsel Website:
TEACH Act -- Resources

Hoon, Peggy E. The TEACH Toolkit; An Online Resource for Understanding Copyright and Distance Education. 2002.
http://www.lib.ncsu.edu/scc/legislative/teachkit/
TEACH Act -- Resources

TEACH Act.
http://www.ala.org/ala/washoff/WOissues/copyrightb/distanceed/Default3685.htm#newc

TEACH Act Comparison Chart.
http://www.unc.edu/%7Eunclnng/TEACH.htm
Fair Use

*Fair use* is a concept unique to U.S. law that provides a defense to copyright infringement in certain *special situations.* If a use is a fair use, then one may copy an otherwise protected work without permission from the copyright owner and without the use being deemed an infringement.

Fair Use

Fair use is an exception to exclusive rights of copyright owners, and it is only available for limited uses for such purposes as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research.

Depending upon the balance of the “four factors,” copying for these purposes is not an infringement under U.S. law.

Fair Use

- Fair use must be determined by the person making the material available.

- Basic rules of fair use analysis:
  - There are no clear cut standards – analysis is on a case by case basis.
  - No single factor is determinative.
Fair Use

We would all appreciate a clear crisp answer…but far from clear and crisp, fair use is better described as a shadowy territory whose boundaries are disputed, more so now that it includes cyberspace than ever before. In a way, it’s like a no-man’s land. Enter at your own risk.
Fair Use – Four Factors

Fair use is determined by balancing the four factors detailed in the Copyright Act in relation to the intended use.

- Purpose and character of the use
- Nature of the copyrighted work
- Amount and substantiality used
- Effect of use upon potential market for or value of the copyrighted work
Four Factors – Purpose

- Nonprofit educational use
- Criticism and comment
- News reporting
- Face to face teaching
- Scholarship and research
Four Factors – Nature

- Digital or analog
- Audio-visual formats
- Performance or display
- Published before or after 1976
- Picture

- Fiction or non-fiction
- Software
- Dramatic or non-dramatic
- Published or unpublished
- Sculpture
Four Factors – Amount

- Quantitative: A small portion
- Qualitative: Not the “heart of the work”
Four Factors – Effect

- No significant effect on the market for the work
- No significant effect on the potential market for the work
- No similar product marketed
- Licensing or permission mechanism is absent
# Fair Use Checklist

**CHECKLIST FOR FAIR USE**

Please complete and retain a copy of this form in connection with each use of copyrighted work for your project.

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Teaching (including multiple copies for classroom use)</td>
<td>Commercial activity</td>
</tr>
<tr>
<td>Research</td>
<td>Profiting from the use</td>
</tr>
<tr>
<td>Scholarship</td>
<td>Infringement</td>
</tr>
<tr>
<td>Nonprofit Educational Institution</td>
<td>Bad faith behavior</td>
</tr>
<tr>
<td>Criticism</td>
<td>Detracting credit to original author</td>
</tr>
<tr>
<td>Comment</td>
<td></td>
</tr>
<tr>
<td>News reporting</td>
<td></td>
</tr>
<tr>
<td>Transformative or Productive use (changes the work for new purpose)</td>
<td></td>
</tr>
<tr>
<td>Neroficial access to dataset or other information pool</td>
<td></td>
</tr>
<tr>
<td>Parody</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Nature</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Published work</td>
<td>Unpublished work</td>
</tr>
<tr>
<td>Nonfiction based</td>
<td>Highly creative work</td>
</tr>
<tr>
<td>Important is favored educational objectives</td>
<td>Fiction</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Amount</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small quantity</td>
<td>Large portion or whole work used</td>
</tr>
<tr>
<td>Portion used is not central or significant to new work</td>
<td>Portion used is central to work</td>
</tr>
<tr>
<td>Amount is commensurate for favored educational use</td>
<td>Amount of the work</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Effect</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>User owns lawfully acquired or purchased copy of original work</td>
<td>Could replace sale of copyrighted work</td>
</tr>
<tr>
<td>One or few copies made</td>
<td>Significantly impair market or potential market for copyrighted work</td>
</tr>
<tr>
<td>No significant effect on the market or potential market for copyrighted work</td>
<td>Reasonably available licensing mechanisms</td>
</tr>
<tr>
<td>No similar product marketed by the copyright holder</td>
<td>Affordability of available licensing mechanisms</td>
</tr>
<tr>
<td>Lack of licensing mechanism</td>
<td></td>
</tr>
</tbody>
</table>

This document is provided as a courtesy of the Copyright Management Center, RIPULA, 530 W. New York St., Indianapolis, IN 46202. For further information and updates please visit [https://www.copyright.rup.edu](https://www.copyright.rup.edu). This document last updated March 18, 2003.
Applying Fair Use

Checklist for Fair Use
http://copyright.iupui.edu/checklist.htm

Copyright and Fair Use Guidelines for Teachers
Applying Fair Use

Fair-Use Guidelines

http://copyright.iupui.edu/fu_overview.htm
Permissions

Getting Permission

http://www.utsystem.edu/ogc/intellectualproperty/permission.htm

Copyright Clearance Center

http://www.copyright.com
Sample Permission Letters

Sample Letter Requesting Permission

http://www.utsystem.edu/ogc/intellectualproperty/permmm.htm

Bellingham Public Schools

http://www.bham.wednet.edu/copyperm.htm
Protect Yourself

- Keep documentation
- File copyright information, written permissions and documentation together
- Contact the General Counsel with questions
General Resources

Complete Copyright (Companion website to *Complete Copyright: An Everyday Guide for Librarians*)

http://www.ala.org/completecopyright

Copyright and Multimedia Law for Webbuilders & Multimedia Authors

http://bailiwick.lib.uiowa.edu/journalism/mediaLaw/copyright_main.html
General Resources

Copyright and Digital Resources
http://www.bsu.edu/library/collections/copyright

Copyright Crash Course
http://www.utsystem.edu/ogc/intellectualproperty/cprtindx.htm

Copyright Guidelines for Administrators
http://www.techlearning.com/copyrightguide/
General Resources

Copyright Resources on the Internet
http://www.groton.k12.ct.us/mts/pt2a.htm

Copyright Website
http://www.copyrightwebsite.com/

techLEARNING
http://www.techlearning.com
General Resources

KF2995 B88 2004

Crews, Kenneth D. *Copyright law for librarians and educators*. 2d ed. 2006. ALA, Chicago.
KF2995 C74 2006

KF2995 C57 2004
General Resources

(available from Nebr. Library Commission)
