

# COPYRIGHT & ONLINE COURSES

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# Overview

- Copyright Basics
- Fair Use
- Alternatives to Fair Use
- Common Misconceptions
- Scenarios
- Questions

# Copyright (Section 106)

- Copyright protects “original works of authorship” that are fixed in a tangible form of expression:
  - *literary works;*
  - *musical works;*
  - *dramatic works;*
  - *pantomimes and choreographic works;*
  - *pictorial, graphic, and sculptural works;*
  - *motion pictures and other audiovisual works;*
  - *sound recordings; and*
  - *architectural works.*

# Copyright is a bundle of rights

- *Rights are held by the OWNER of the work (not necessarily the creator/author). Owners may:*
  - **Reproduce** - Make copies of their works publicly or privately.
  - **Adapt** - Prepare additional works derived from their copyrighted work, (aka, derivative works).
  - **Distribute** - Disseminate copies of their works, to the public by sale or other transfer of ownership, or by rental, lease, lending.
  - **Perform** - Perform their work publicly (at location open to the public or to persons other than close family and social acquaintances).
  - **Display** - Display their work publicly (applies to all works except sound recordings and architectural works).

# KU Intellectual Property Policy

- Students are the copyright owners of work submitted to fulfill academic requirements. (This does not apply to works derived from research/development that are collaborative efforts among students, faculty, and/or staff or spanning several semesters.)
- Ownership of scholarly and artist works, including manuscripts for academic journals, lies with the creator/author.
  - Note: Publication agreements generally require an author to transfer copyrights to a publisher. Authors are often able to negotiate these agreements to maintain their rights to their scholarly work.

# Length/Term of Copyright

- Life of author plus 70 years
- Joint work – 70 years after last surviving author’s death
- Works made for hire – 95 years from year of first publication or 120 years from year of creation, whichever expires first
- Works published before 1923 are in the public domain
- Copyright slider to determine whether the work is in the public domain -

<http://librarycopyright.net/resources/digitalslider/>

# Penalties

- The Court can award up to \$150,000 for each separate act of infringement and/or imprisonment.
- Liability may be reduced for nonprofit, educational uses, as long as the user can demonstrate that a good faith evaluation of the fair use factors resulted in a reasonable belief that the use was fair use.

# § 107. Limitations on exclusive rights: Fair use

- Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.
- In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include —



# The four fair use factors:

- What is the character of the use?
- What is the nature of the work to be used?
- How much of the work will you use?
- What effect would this use have on the market for the original or for permissions if the use were widespread?
- See Columbia University Fair Use Checklist

# First Factor: Purpose & Character of the Use

## Favoring Fair Use

- Teaching
- Research
- Nonprofit educational
- Criticism
- Parody
- Transformative
- Scholarship
- Commentary
- News reporting

## Opposing Fair Use

- Commercial
- Profiting
- Public Distribution
- Denying credit to original author

From: Cornell's [http://www.copyright.cornell.edu/policy/Fair\\_Use\\_Checklist.pdf](http://www.copyright.cornell.edu/policy/Fair_Use_Checklist.pdf)  
and Univ Minn Fair Use Analysis Tool : <http://www.lib.umn.edu/copyright/checklist.phtml>

# Second Factor: Nature of work

## Favoring Fair Use

- Published work
- Factual or nonfiction based

## Opposing Fair Use

- Unpublished work
- Creative work (art, music novels, films, plays)
- Consumable work (workbooks, textbooks, tests, exercises)

# Third Factor: Amount

## Favoring Fair Use

- Small quantity
- Portion used is not central or significant to entire work
- Amount is appropriate for educational purposes.

## Opposing Fair Use

- Large portion or whole work used.
- Portion used is central or “heart of work”
- Includes more than necessary for education purpose

# Fourth Factor: Market Effect

## Favoring Fair Use

- One or few copies made.
- No significant effect on the market or potential
- Use stimulates market for original work/No impact on market
- Restricted access (limited to students in a class or other appropriate group)
- Lack of licensing & permission mechanism
- No longer in print; absence of licensing mechanism

## Opposing Fair Use

- Could replace sale of copyrighted work.
- Impairs (potential) market for copyrighted work
- Numerous copies made.
- Repeated long term use.
- Copies made accessible on Web or other public forum
- Licenses/permissions available

# Balancing test

- Use the Fair Use Checklist
- If a use is tipping the balance in favor of asking for permission one need not "assume" it's not fair, the first 3 factors show that it's not. Add to that an active permissions market and the fourth factor will decisively tip the balance. Forget fair use. Get permission.
- Does the balance for your use tip in favor of fair use or in favor of getting permission after consideration of all four factors?

# Rules of Thumb

## 1. Limit materials to:

- Text Materials – A complete article, story or essay of less than 2,500 words; or, an excerpt of no more than 10 percent, or 1,000 words, whichever is less.
- Poetry – An entire poem of less than 250 words or an excerpt of no more than 250 words; but no more than 3 poems by one poet or five poems by different authors in a single work.
- Music – An excerpt of no more than 10 percent of the song or music video, but no more than 30 seconds of the total work.
- Motion Media – An excerpt of no more than 10 percent, or 3 minutes, whichever is less.
- Illustrations or Photographs – An excerpt of no more than 5 images from a single artist or photographer; an excerpt of no more than 10 percent or fifteen images, whichever is less, from a collection.
- Data Sets – an excerpt of no more than 10 percent, or 2,500 entries, whichever is less.

# Rules of Thumb

## 2. Include

- any copyright notice on the original
- appropriate citations and attributions to the source.

## 3. [Obtain permission](#) for materials that will be [used repeatedly](#) by the same instructor for the same class.

## Application of the Rules of Thumb -

- Cambridge University Press v. Becker – The Georgia Tech Case
- Discipline Specific Guidelines for Fair Use



# The TEACH Act

- Technology, Education and Copyright Harmonization Act
- Expands scope and breadth of permissible use in distance learning environment to make it comparable to what is permissible in face-to-face teaching.
- KU does not currently meet the technical requirements for the TEACH Act for most online delivery mechanisms.
- The TEACH Act does not extend to:
  - Electronic reserves, electronic course packs, or interlibrary loans
  - Commercial document delivery
- The rights afforded under the TEACH Act are comparable to fair use.

# Complement to Copyright:

Creative Commons:





<http://www.creativecommons.org>

Creative Commons Licenses:

- Show how you have chosen to share YOUR creations and scholarship
- Determine what you are allowed to do with other authors' creations and scholarship

# Creative Commons Licenses

Creators choose a set of conditions they wish to apply to their work.

-  **Attribution.** You let others copy, distribute, display, and perform your copyrighted work – and derivative works based upon it – but only if they give credit the way you request.
-  **Noncommercial.** You let others copy, distribute, display, and perform your work – and derivative works based upon it – but for noncommercial purposes only.
-  **No Derivative Works.** You let others copy, distribute, display, and perform only verbatim copies of your work, not derivative works based upon it.
-  **Share Alike.** You allow others to distribute derivative works only under a license identical to the license that governs your work.



# Permissions

Needing/Getting Permission to use copyrighted material:

- Columbia's Copyright Advisory Office (my favorite)  
<http://copyright.columbia.edu/copyright/permissions/>
- Copyright Clearance Center:  
<http://www.copyright.com/>
- Public Domain materials:  
[http://www.copyright.cornell.edu/public\\_domain/copyrightterm.pdf](http://www.copyright.cornell.edu/public_domain/copyrightterm.pdf)
- US Copyright Office: <http://www.copyright.gov/records/>

# Common Misconceptions

- As long as I'm using a work for an educational purpose, I am not infringing on copyright.
- If a copyrighted work is placed on Blackboard, which is password protected and only accessible by students enrolled in the class, it is not an infringement on copyright.
- It is ok to distribute multiple chapters of the same book to a class, so long as those chapters are only distributed one at a time.
- If I don't see a copyright symbol, the work must be in the public domain and is ok to use.
- If something is on the internet, it must be in the public domain and is ok to use.
- It is fair use to distribute the same article to the students in my class, semester after semester.

# Using Your Work in Online Courses

“It’s my work, so I can do whatever I want with it.”

– Not necessarily true...

Publication agreements (also known as copyright transfer agreements) usually require an author to transfer copyrights to a publisher.

This can include the right to use the work in teaching, create derivative works, and share copies with your students or other researchers. Sometimes the publisher grants rights back to an author and sometimes not.

The KU Libraries’ Center for Digital Scholarship can provide addenda to help authors keep their rights as they negotiate these agreements.

# Using Your Work in Online Courses

- Many publishers allow the author to share their final draft in an online institutional repository like **KU ScholarWorks**: <http://kuscholarworks.ku.edu>
- If you want to use your work in a course, talk to the Center for Digital Scholarship to see if your publisher allows you to share it through KU ScholarWorks.
- Works shared in KU ScholarWorks have a permanent URL that can be given to your students.

# Scenarios – The Fair Use Analysis

- You want make a student-made video available on the website. This video was made by a student in the student's journalism class. The video promotes a particular field of study and will be used by you as a recruitment tool, to encourage students to major in the field relating to your class. This video includes a full length song in the background. It displays teachers and students standing in a hallway talking, with posters and artwork behind them. The video ends with a text display and contemporaneous oral recitation of a short poem. Do you have any copyright concerns? Does the video need to be modified in any way before you post it online?



# Scenarios

- You want to use part of a clip from a movie in a class PowerPoint presentation. What do you need consider to decide whether this use is a violation of copyright?
- You want to include multiple chapters of a book on Blackboard. Is this a violation of copyright? Why or why not? Can he/she request multiple chapters through ILL?
- Can you place clips of movies on Blackboard?
  - Can you make an entire video available to students as part of required viewing for a later class discussion?

# Questions?

# Sources

This presentation was adopted from an earlier presentation created by Ada Emmett and Rachel Rolf.

- The Copyright Crash Course © 2001 Georgia K. Harper  
<http://www.utsystem.edu/ogc/Intellectualproperty/cprtindx.htm>
- Columbia University Copyright Advisory Office – Fair Use Checklist  
<http://copyright.columbia.edu/copyright/fair-use/fair-use-checklist/>
- Section 106 of 1976 Copyright Act  
<http://www.copyright.gov/circs/circ1.pdf>
- Circular 21 (Reproduction of Copyrighted Works by Educators and Librarians)  
<http://www.copyright.gov/circs/circ21.pdf>