

# Digital Media, Copyright Law and the Classroom



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# Overview

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## # Purpose of Copyright

- Improving society by supporting the growth of knowledge
- Balancing interests
  - Owners' rights; users' rights

## # Copyright Basics

- Illustrate the balance

# Copyright Basics

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- # What Does Copyright Protect?
- # When Does it Begin and End?
  - Foreign works
- # What Does it Mean to Owners?
  - Understanding Ownership
- # What Does it Mean to Users?
  - What is fair use?
  - What is the TEACH Act?
- # Who's Liable for Infringement?

# What Does Copyright Protect?

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- # Original Expression - A Person's Unique Way of Saying Something
- # Fixed in a Tangible Medium
- # Only Requires Minimum Creativity
- # Does Not Protect Facts
- # Does Not Protect Ideas, Systems, Processes

# When Does it Begin and End?

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- # Today: Protection Starts at the Moment of Fixation in a Tangible Medium
- # It's Automatic
- # Notice is Not Required
- # Registration Carries Certain Benefits but is only Required to Bring a Lawsuit

# When Does It Begin and End?

## Terms of Protection

- # Works Published Before 1978
  - Publication + 95 years or 28 years if published before 1964 and not renewed
- # Works Created During/After 1978
  - Life of author + 70
  - Works for hire: Publication + 95/creation + 120
- # Works Unpublished Before 1978
  - Life of author + 70 or 2003, whichever is longer

# Ownership

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- # First Principle: The Author is the Owner
- # Joint Ownership
  - Contributors of copyrightable expression
  - At the time of creation:
    - Intend to create a unified whole
    - Intend to be joint authors

# Work Made for Hire

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- # Employee's work within the scope of employment
  - At work
  - During work hours
  - Using work facilities and resources

# Work Made for Hire

- # Specially commissioned or ordered work
  - If the parties agree in a signed written document
  - For use as a 1) contribution to a collective work 2) part of a movie or AV work 3) compilation 4) translation 5) supplementary work 6) instructional text 7) test 8) answer material for a test or 9) an atlas
- # The effect of money contributions

# Transfer of Ownership and Rights

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- # Ownership can be transferred
- # Rights can be licensed
  - Copy, perform, display, adapt, distribute
  - All rights, some rights, for a time or forever, limited to geographical scope, purpose, etc.

# Intellectual Property Policy

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- # Policy Can Allocate Ownership
  - University
  - Faculty
- # Policy Can Address Interests of Non-Owner
  - Use
  - Attribution
  - Reimbursement
  - Share in royalties

# Who Owns Course Materials?

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- # Start with "The author is the owner"
- # Next, ask, "Was the work created within scope of employment or commissioned?"
  - What does your policy say about course materials
- # Has ownership been transferred

# Exclusive Rights of the Copyright Owner

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- # Make Copies
- # Create Derivative Works
- # Distribute, Display and Perform Works Publicly
- # Artists' Moral Rights
  - Integrity/attribution
- # Controlling Copies: Not the Only Way

# Exemptions for Higher Education

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- # Fair Use (17 USC 107)
- # Library's Special Privileges (108)
- # First Sale Doctrine (109)
- # Educational Performances/Displays (110)
- # Modifications for Blind and Disabled (121)

# Role of Fair Use

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- # Fair Use Embodies a Balance of Interests
  - Between owner control and public access
  - Between owner control and public's First Amendment rights
- # Fair Use Addresses Market Failures
  - Facilitates good, but uneconomic uses

# Fair Use Statute

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- # 17 USC 107

- # Uses Such As...

- # Four Factor Fair Use Test

  - Character of the use

  - Nature of the material used

  - Amount and importance of part used

  - Effect on market for permission/original

# Character of the Use

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## # Favoring Fair Use

- One of the listed uses
- Nonprofit educational
- Restricted access
- Transformative
- Parody

## # Favoring Permission

- Commercial use (profit)
- Entertainment
- Bad-faith

# Nature of Material Used

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## # Favoring Fair Use

- Published
- Factual
- Nonfiction

## # Favoring Permission

- Unpublished
- Highly creative work
- Fiction

# Amount Used

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## # Favoring Fair Use

- Small amounts
- Not the heart of the work
- Appropriate in light of purpose

## # Favoring Permission

- Large amounts
- Heart of the work

# Effect on Market

## # Favoring Fair Use

- Owning a copy
- Few copies made
- First 3 factors favor fair use
- No ready market for permission
- Out of print
- Owner unidentifiable

## # Favoring Permission

- Takes away sales
- Easy licensing mechanism
- Many copies made
- Wide distribution of copies
- Repeated use
- First 3 factors favor permission

# Guidelines

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- # Contextual
  - Coursepacks; reserves; distance learning; image archives; multimedia; off-air taping, etc.
- # Not the Limit of Fair Use
- # Convenient, but More Limited than Statute
- # Use Both Statutory Test and Guidelines
- # If a Use is Not Fair, Pare it Down, Substitute, or Get Permission

# TEACH Act Overview

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- # Right to display and perform works *in the classroom during a lecture*
  - *Brick-and-mortar classrooms*
  - *Virtual classrooms*
    - Very specific, limited and conditioned

# In the Classroom - 110(1)

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- # Brick-and-mortar classrooms
- # Nonprofit educational institutions
- # Displays or performances of *any work* in any medium
  - Audiovisuals
    - Legal copy

# For Distant Students 110(2)

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- # Accredited nonprofits & government
- # Smaller parts
- # Technological limits
- # Institutional requirements
- # Exclusions for supplemental materials
- # ETC. ETC. ETC. ETC. ETC.
- # Why the different standard?

# Performance Rights and Fair Use

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- # TEACH Act Permits Some Copying
- # Fair Use is Best Source of Authority for Reproduction Beyond Section 110
  - Be sensitive to the availability of effective markets for permission and licenses to use digital materials
- # Fair Use is the **Only** Authority for Supplemental Materials

# Who's Responsible for Infringement?

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## # Individual Liability

- The good faith fair use defense

## # Vicarious Liability

- Sovereign immunity
- DMCA ISP liability limitations

# Individual Liability

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- # Strict Liability Standard

- # Penalties

  - \$150,000 per willful infringement

  - \$750 to \$30,000 per innocent infringement

# The Good Faith Fair Use Defense

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- # 17 USC 504(c)
- # Permits Court to Remit Damages
  - Infringer believed and had reasonable basis for believing that use was fair
- # Following Institutional Policy is Excellent Protection

# Vicarious Liability

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## # Agency: Employees

- Within general scope of authority
- Substantially within time/space
- Serves University interests

## # Vicarious: Independent Contractors

- Benefit and control

## # Contributory: Students

- Knowledge and participation

# Risk Reduction: Permission

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- # Centralized Support for Obtaining Permission
- # Coordination between Faculty Members, Permission Facility and Digital Library
  - Licensed works do not require permission

# DMCA ISP Liability Limitations

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- # Does Not Apply to Online Courses
  - Faculty research exception
- # Protects University from Liability for Student Infringements
  - Highly detailed procedures

# For More Information

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# The Copyright Crash Course

[www.utsystem.edu/ogc/  
intellectualproperty/cprtindx.htm](http://www.utsystem.edu/ogc/intellectualproperty/cprtindx.htm)

# TEACH Act

[/teachact.htm](http://teachact.htm)

# Online Tutorial

[www.lib.utsystem.edu/copyright](http://www.lib.utsystem.edu/copyright)

# Summary

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- # Copyright's Purpose is to Improve Society by Advancing Knowledge
  - The law achieves its purpose by balancing interests
  - Owner's rights and users rights are both vital to achieving the law's purpose