

Intellectual Property: Overview of Copyright Law and the TEACH Act

Distance Learning Workshops
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Intellectual Property in Higher Ed



- Why is IP *significant to me*?
 - Creating intellectual property?
 - Using others' intellectual property?
 - Use of copyrighted material face to face?
 - Use of web-based learning management systems?
 - Engaged in distance learning?
 - Researching?
 - Presenting?

University IP Policy



- MGA Policy covers:
 - Copyrights
 - Trademarks
 - Patentable Inventions
- Like BOR Policy, distinguishes between:
 - Individual effort
 - Sponsor-supported effort
 - University-assigned effort
 - University-assisted effort
 - Other effort
- Online at policies.mga.edu

Today's Focus:

Copyright Law (17 U.S.C. §101)



- Protected author's original "works of authorship" that are fixed in a tangible medium
 - Work of authorship must be "original"
 - Work must be "fixed in a tangible form"
 - "Works" include:
 - Literary works
 - Musical works
 - Dramatic works
 - Pantomimes and choreography
 - Pictorial, graphic and sculptural works

Purpose of Copyright Law



- Balancing act between:
 - exclusive rights of the copyright holder
 - AND
 - needs of the public

Basic Concepts of Copyright Law



- What is protected?
- Protection is automatic
- How long does it last?
- Copyright owners' exclusive rights

General Rule: One must obtain permission from copyright owner in order to use one of these exclusive rights.



Exceptions to the Rule

- Exceptions allow educators to use copyright protected materials... provided you follow certain guidelines or criteria
 - §110(1) Exemption for F2F Classroom
 - § 107 Fair Use Exemption

Fair Use Exemption



- Can make fair use of copyrighted work without permission.
- Determination whether within fair use depends on reasoned and balanced application of the four (4) fair use factors.

Four Factors of Fair Use



- Purpose and Character of Use
- Nature of Copyrighted Work
- The Amount and Substantiality of the Portion used in relation to the whole
- Effect of the Use on the Potential for or Value of the Copyrighted Work

**No One Factor will Determine Outcome
Use the USG Checklist as a Record of Evaluation*

Purpose and Character of the Use



- Section intended to apply to teaching, research and education
- Educational purpose alone does not make it fair use
- Favors non-profit educational uses over commercial
- Transformative vs. mirror image copying

Nature of Copyrighted Work



- Characteristics of the work being used
- Unpublished Work
- Informational vs. Fictional
- “Consumables”

Amount of Work Used



- Measured Quantitatively and Qualitatively
- No Exact Measurement of Allowable Quantity Exists (*crux of Georgia State case*)
- Copying of Entire Works vs. Excerpts
- “Heart of the Work”

Effect on the Value



- Extent to which a given use affects the potential market for or value of a copyrighted work

Threshold Questions



- Is the work to be used protected by copyright?
 - If not, a fair use analysis is not necessary.
- Do you or your institution have a license or permission to use the work?
 - If so, does your use fall within that license?
- Is work available through an electronic database at your institution's library?
 - Can you link directly to that work?
- Does it fall within §110(1), the general exception?
 - If so, no need for §107, fair use.

TEACH Act Overview



- 2002 update to Copyright Act of 1976
 - Meant to modernize act for use of Internet in education
- Covers face-to-face and distance learning
- Exempts transmission of copyrighted work by accredited non-profit institutions to:
 - Students enrolled in a course; and
 - Employees as part of official duties.

TEACH Act: Specific Requirements



- Copyrighted work must be:
 - Part of instructional activity
 - At the direction or under supervision of instructor
 - Integral part of class session
- Transmitted copies must be lawfully made
- Institution must
 - Apply measures to reasonably prevent retention and further distribution
 - Not interfere with technological protections

TEACH Act Comparison: *Face-to-Face v. Distance Learning*



Rule	Face-to-Face 17 U.S.C. § 110(1)	Distance Learning 17 U.S.C. § 110(2)
Applies to	Nonprofit institutions	Accredited nonprofit institutions
Permits display of	Any work	Any work in amount typically displayed in live classroom session
Permits performance of	Non-dramatic literary and musical works	Non-dramatic literary and musical works + limited portions of any other works
Copy must be	Made lawfully	Made lawfully + no reason to believe acquired unlawfully
Performance during	Classroom activities	Transmission made solely to enrolled students
Performance by	Instructor or pupil	At direction or under supervision of instructor
Institution must	N/A	Have policies, train faculty/ students/staff, provide notice, reasonably prevent unauthorized

TEACH Act

Do's & Don'ts



- DO use a checklist to evaluate responsibilities under TEACH Act
 - *University of Texas Checklist available online*
- DO check with your CIO and/or Office of Distance Education on institution-specific guidance
 - *Attend offered training*
- DON'T assume Fair Use alone covers your use of online materials
 - *When in doubt, ask!*



References

- Cornell University Law School. Legal Information Institute. Can access Copyright Act, 17 U. S.C. §101 at <https://www.law.cornell.edu/uscode/text/17/101>
- University System of Georgia (2017). Copyright Policy: Policy on the use of copyrighted works in education. Can be accessed at <http://www.usg.edu/copyright>
- University System of Georgia (2017). Fair Use Checklist. Can be accessed at http://www.usg.edu/copyright/fair_use_checklist
- University of Texas (2016). Copyright Crash Course: TEACH Act, including Checklist. Can be accessed at <http://guides.lib.utexas.edu/copyright/teachact>

Thank You!



- Questions?



"Legal just called. That tune you're whistling is a copyright infringement."