Copyright Basics Questions

Q. What is copyright and why is it important?

A. Any work is accorded copyright protection when it is "fixed in a tangible medium of expression" (Section 101), such as written on a piece of paper, recorded on a disk or tape, etc. Copyright now exists from the moment of this fixation regardless of whether the copyright is registered. The work must be registered if the copyright holder wishes to bring a lawsuit for infringement.

Copyright does not protect facts, ideas, systems, or methods of operation, although it may protect the way these things are expressed.¹

Q. I want to make a print copy of a Shakespearian play I found in a copyrighted anthology. Is this a fair use?

A. The play is in the public domain and not subject to copyright protection. Other public domain materials include government documents; factual materials, ideas, process, methods, and systems described in copyrighted works; and works whose copyright has expired.

Q. How long does a copyright last for an individual work?

A. The duration of copyright varies greatly depending on the year in which it was created or published because the law has been amended several times. Currently, a copyright lasts for the life of the author plus 70 years. If the work is one that is created for someone else (a "work for hire") or it is anonymous or pseudonymous (i.e., pen name), it lasts for 95 years from the year of first publication or 120 years from the date of creation, whichever expires first. Once a copyright expires the work belongs to the "public domain" and may

be used freely by anyone. The author may also put the work into the public domain before expiration of the statutory period by expressly saying so.

The public domain chart which was created by Laura Gassaway at University of North Carolina provides useful guidance on when a work has entered the public domain. It has been updated for the Sony Bono Term Extension Act, P.L. 105298. http://www.unc.edu/~unclng/public-d.htm

Q. What sorts of work may be copyrighted?

A. The following are copyright-protected works:
   (a) literary works
   (b) musical works, including any accompanying words
   (c) dramatic works, including any accompanying music
   (d) pantomimes and choreographic works
   (e) pictorial, graphic, and sculptural works
   (f) motion pictures and other audiovisual works
   (g) sound recordings
   (h) architectural works

   It is helpful to remember that the presence or absence of a copyright notice no longer carries the significance it once did because the law no longer requires a notice. Older works published without a notice may be in the public domain, but for works created after March 1, 1989, absence of a notice means nothing. Finally, those works that were created before December 31, 1978, but never published, are now protected for the length of the life of the author plus 70 years or until December 31, 2002, whichever is greater.

Q. What are the penalties for infringing on someone's copyright?

A. The penalties vary depending on the medium and the nature of the use. Civil remedies can include statutory damages which can total up to $100,000 per willful infringement. While educators may not be required to pay statutory damages because of the "innocent infringer" provision (Section 504c), they may be responsible for paying the copyright owner's actual damages caused by their infringement as well as their own attorney's fees, court costs, etc.\(^2\) Ignorance of the law is no excuse. If you don't know you are infringing, you will still be liable for damages.

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\(^2\) Talab, R.S. "Permissions, fair use, and production resources for educators and librarians", TechTrends, v. 45 #3, May/June, 2001, pp. 7.
Q. Who on campus can I contact with questions about fair use or copyright?

A. The Trexler library director, Debbie Malone, is registered with the Copyright Office as the copyright officer for the university. She can offer you advice on non-infringing uses of copyrighted material. This does not, however, constitute legal advice.

Web Related Questions

Q. I want to scan an article from a copyrighted journal and add it to my class web page. Is this a fair use?

A. Links to articles from the databases to which Trexler Library subscribes may be included in your password protected course page. The license agreements which the library signs permit this protected use. For assistance on creating these links see our tutorial at http://mediasrv.desales.edu/dept/library/linkingangel6.wmv or look on the library homepage at http://www.desales.edu/library under “Faculty Resources.”

Q. May I scan in the text of an entire play or novel if my web site is password protected so that only my students can use it?

A. No, you may not scan an entire work and place it on the web. Fair use guidelines limit the amount of a work which may be used without permission of the copyright holder. You may use a “reasonable” portion.

Q. I want to use an image and an icon found on a web site. Do I need permission?

A. There are many sites with images, and some are copyrighted and some are not. Just because a click of a mouse can copy an image from the Web does not mean that it is legal to do so. Read the rights and/or licensing information on the homepage for these resources to see what uses can be made of these images.

Trexler Library subscribes to ArtStor, a database of over 10,000 images which you may use for educational purposes. It is available from the library database page at http://desales.libguides.com/databases

There are some sites that feature public domain images. Try:

http://library.duke.edu/digitalcollections/adaccess/
http://www.PDImages.com
http://www.webclipart.about.com
http://sunsite.berkeley.edu/ImageFinder
Q. What is the difference if I use videos or other multimedia material in my class or put it on the course web site?

A. Section 110 of the copyright law authorizes educational performances and displays of entire works (like poems, plays, musical works and movies) but it significantly distinguishes between what can be performed in the classroom and what can be transmitted. This results in a "gap" in legal authority to perform certain works for distance learners in an online environment. These types of uses are so new that it is hard to describe fair use in this context. You may use a “reasonable” portion of a work in your online class, but not the entire work. You will need to seek permission to use an entire work online.

Q. I want to use a copyrighted commercial film in my online class. Are there any specific provisions of the copyright laws that apply to online classroom use?

“Section 110(2) of the copyright law (otherwise known as the “TEACH Act”) specifically applies to displaying images, playing motion pictures or sound recordings, or performing works in your online class. Since this section applies to any “transmissions” of performance or displays, cable television classes should also be included here.

There are a number of institutional and faculty member obligations that must be fulfilled in order to use the TEACH Act…Generally, to perform or display a work in your online class the work must be

- Used under your supervision
- As part of the class session
- As part of systematic mediated instructional activities

Mediated instructional activities are activities that use such [permitted] works

- As an integral part of the class experience
- Under the control or actual supervision of the instructor
- In a manner analogous to performances and displays in live classroom settings.

According to the Senate Report accompanying TEACH Act, such activities must use the works as part of the course, rather than ancillary to it…

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4 Using Copyrighted Works in Your Teaching – FAQ: Questions Faculty and Teaching Assistants Need to Ask Themselves Frequently. Peggy Homan, J.D. Washington, D.C: Association of Research Libraries. 2007 http://creativecommons.org/licenses/by-nc/2.5/
According to this analysis, you may show the video if you are using it in a synchronous online session in which all students are viewing the video together.

However, if you want to make the video available to students to view on their own time outside of a synchronous class session, you will need to rely on normal Fair Use provisions as described above. You would be allowed to stream only a “reasonable” portion of a video, rather than the entire work.

Q. What happens if one of my students posts copyrighted material on his/her personal web page?

A. Students are solely responsible and liable for the content of their personal web pages. Posting infringing material on a personal webpage is illegal and against university policy. If the university becomes aware that there are infringing materials on a site residing on the university server, the university will remove the material or prevent access to the site. Repeat infringements will subject the individual to university disciplinary procedures that can include termination of computer access privileges.

Q. When creating my web pages, can I freely link to any site I chose on the Internet?

A. These days, it is probably a good idea to seek permission to create a link to most sites, especially commercial ones. It is a trademark infringement to link to a company logo so that it appears on your page. Many companies object when you "deep link" to a page on their site if you thus avoid their homepage with its advertisements and links to affiliates. For more information and examples, consult http://www.bitlaw.com/internet/webpage.html#linking

Multimedia Materials Questions

Q. I teach a course in which I occasionally use a piece of music, show a picture, or play a short videotape. I have lawfully obtained all of these materials and use them in face-to-face teaching. But I would now like to reproduce these short items onto one compact disk in order to prevent their loss or deterioration, keep them organized, and show them in the class using a single piece of equipment. Is this fair use?

A. Guidelines for such uses are currently the subject of negotiations among diverse groups under the sponsorship of the Consortium of College and University Media Centers. In general these guidelines would allow the creation of such a multimedia work in the name of fair use and allow its retention for up to two years.

One of the complex fair-use issues for multimedia production has been an understanding of its potential effect on the market for the originals. Even brief excerpts, reproduced into digital format, are sometimes said to directly undermine the ability of the creator or publisher to market or license such excerpts. Thus, making the copies would directly
erode that potential market.

Also problematic is the "nature" of the different works. Some materials may be of a factual or scholarly nature and thus more amendable to fair use. Other materials used in multimedia are often professional photography, music, or motion pictures that may have a significant public market.5

Q. I want to copy various pieces of music from classical composers and put them on a DVD/CD which I want to distribute to students in my class. Is this a fair use?

A. Even though a musical composition is in the public domain, the performance of that work which has been recorded is protected by copyright. Creating anthologies of various pieces and distributing the copies to students is definitely an infringement in that it directly interferes with the marketing of the publishers' work. A better alternative would be to place lawfully obtained copies of the works on reserve in the library.

Trexler Library now subscribes to the NAXOS Music Library database which allows professors to create playlists for their students. See http://desales.naxosmusiclibrary.com/default.asp

Q. Can I make a DVD/CD with pictures and music on it for use in my class?

A. Yes, educators may create educational multimedia tools for use in face-to-face teaching activities in non-profit educational institutions. These tools are considered a fair use under certain circumstances.

Educators and students may not use their personally created educational multimedia projects over electronic networks without obtaining permissions for all copyrighted works incorporated in the program. These multimedia tools may not be duplicated and distributed to students or the public at large.

For more information on these guidelines, see http://www.utsystem.edu/ogc/intellectualproperty/ccmcguid.htm

Q. I taped a PBS television show and I want to use it in my class. Is this a fair use?

A. Yes, this is a fair use under certain conditions. Off-the-air recordings may be used only once by individual teachers in the course of "time-shifting" the program in order to show it in class. After the program is used in class, it should be erased. These

recordings must be used only in classrooms or other places devoted to instruction. The off-the-air recordings need not be used in their entirety, but they may not be altered from their original content. The recording may not be combined or merged to constitute teaching anthologies or compilations.

Course pack Questions

Q. I want to create a coursepack of readings for my class and make the material available for purchase in the bookstore. Do I need to obtain permission from each and every author?

A. Yes, you will need to obtain permissions for everything you wish to include in your coursepack. Making and selling multiple copies of a work is definitely a copyright infringement even if no profit is made on the sale. Both the DeSales University bookstore and the Trexler Library will help you obtain these permissions.

Q. Do I need to get permissions each semester I plan to use my coursepack?

A. Yes, you must obtain permission from the copyright holder each semester you use your coursepack. Because there is an economic advantage to authors and publishers in selling these permissions, the courts seem to seem to agree that fair use in this instance is negated.

Getting Copyright Permissions Questions

Q. How do I get permission to use copyrighted material?

A. Both the DeSales University bookstore and Trexler librarians will assist you in securing permissions. If you would like to do this on your own, there are numerous groups that can assist you. You might try some of the following:

Copyright Clearance Center  http://www.copyright.com
222 Rosewood Drive, Danvers, MA 01923

Harry Fox Agency  http://www.nmpa.org/hfa.html (music copyrights)

Univ. of Texas  http://www.utsystem.edu/ogc/intellectualproperty

Sample permission letter  Addendum C
Classroom Copying Questions

Q. Can I make copies of journal articles and portions of books and hand them out to all the students in my class?

A. The ability to reproduce and distribute small portions of copyrighted material for educational use without the prior permission of the copyright holder depends on the fair use section of the Copyright Act. It is fair use to reproduce these items for use in the classroom if the amounts used are brief or “reasonable.”

Q. Can you be more specific about the exact length of materials I may legally copy for classroom use?

A. There are no legal rules permitting the use of a specific number of words or certain percentages of a work. Whether a specific use qualifies as fair use depends on all the circumstances. Nevertheless, in 1976 a group of educators and publishers authored the document "Agreement on Guidelines for Classroom Copying in Not for Profit Educational Institutions with Respect to Books and Periodicals" and had it made part of the Congressional Record. The guidelines are reproduced as Addendum B.

These guidelines provide a safe harbor for those who have hesitations about fair use. They are however, considered by many educators to be inappropriately restrictive for academic needs. More extensive copying will sometimes qualify as fair use, and the fair use analysis should be utilized for copying which goes beyond the minimum guidelines.

Reserve Materials Questions

Q. What is the process for putting copyrighted articles on reserve in the library for student use? Is that still an acceptable practice?

A. A reserve of a photocopied legally obtained article is permissible, and in most cases this use will fall under the fair use doctrine. A Reserve Request Form must accompany any material to be placed on reserve in Trexler Library.

Q. If a faculty member brings materials to the library to be put on reserve, does the library require proof of copyright permission or is this assumed by the library?

A. The Reserve Request Form contains a waiver box that must be signed by the faculty member. If a librarian notices that this is a repeat request, then the librarian may point

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out that copyright guidelines do not allow the placement of an item on reserve for more than one semester. However, it is up to the individual faculty member to keep track of what is being submitted for reserve, and for complying with copyright guidelines. It is not the responsibility of the librarian accepting the reserve material to police the faculty member. Proxy assistants may not sign the Reserve Request Form on behalf of the faculty member.

Further Information

Q. Where can I go for more information on copyright?

A. The United States Copyright Office maintains an extensive site at http://lcweb.loc.gov/copyright/

Trexler Library includes several online copyright tutorials available from the library copyright guide at http://desales.libguides.com/copyright