

Copyright & Copywrog: A Primer on Fair Use, Copyright and the Classroom

Mercy College
March 22, 2004
Corey Seeman
University of Toledo
corey.seeman@utoledo.edu

Copyright & Copywrog: Fair Use and the Classroom



Overview

- Why do we need to worry?
- Copyright chronology
- Copyright basics
- Material that can be freely used
- Fair use
- Possible scenarios of use in the classroom & with educational training

Copyright & Copywrog: Fair Use and the Classroom



Why do we need to worry?

- Most Copyright cases are for music swapping and piracy, aren't they?
- Why do they need to go after me?
- Isn't this for educational purposes?
- No college or university has been sued for copyright infringement, right?
- Isn't this the same as copying articles and handing them out?
- Can I just email the documents to my students?

Copyright & Copywrog: Fair Use and the Classroom



Copyright Chronology

- 1790 -First copyright law enacted under the new U.S. Constitution.
- 1909 - Third general revision of the copyright law.
- 1976 – Copyright Act
- 1998 – Sonny Bono Copyright Term Extension Act
- 1998 – Digital Millennium Copyright Act
- 2002 - Technology, Education and Copyright Harmonization Act (TEACH)

Copyright & Copywrog: Fair Use and the Classroom



Copyright Basics - **WHAT WORKS ARE PROTECTED?**

Copyright protects "original works of authorship" that are fixed in a tangible form of expression. The fixation need not be directly perceptible so long as it may be communicated with the aid of a machine or device. Copyrightable works include the following categories:

1. **literary works;**
2. **musical works, including any accompanying words**
3. **dramatic works, including any accompanying music**
4. **pantomimes and choreographic works**
5. **pictorial, graphic, and sculptural works**
6. **motion pictures and other audiovisual works**
7. **sound recordings**
8. **architectural works**

Copyright & Copywrong: Fair Use and the Classroom



Copyright Basics – **When is Copyright Secured?**

- Copyright is secured ***automatically*** when the work is created, and a work is "created" when it is fixed in a copy or phonorecord for the first time. "Copies" are material objects from which a work can be read or visually perceived either directly or with the aid of a machine or device, such as books, manuscripts, sheet music, film, videotape, or microfilm. "Phonorecords" are material objects embodying fixations of sounds (excluding, by statutory definition, motion picture soundtracks), such as cassette tapes, CDs, or LPs. Thus, for example, a song (the "work") can be fixed in sheet music ("copies") or in phonograph disks ("phonorecords"), or both.

Copyright & Copywrong: Fair Use and the Classroom



Copyright Basics – **When is Copyright Secured?**

- For security, you can register your Copyright with the Library of Congress (www.copyright.gov). This can sway courts when looking at potential damages.
- You can place the copyright on any documents by adding the following info:
 - © 2004 Corey Seeman

Copyright & Copywrong: Fair Use and the Classroom



Copyright Basics – **How Long are Works PROTECTED?**

- Before 1923, public domain
- Published between 1923 & 1963
 - *With copyright notice:*
 - 28 years original term
 - If renewed, would be for 67 years
 - Otherwise, public domain
 - *Without copyright notice:*
 - Public domain as per 1909 act.

Copyright & Copywrong: Fair Use and the Classroom



Copyright Basics – **How Long are Works PROTECTED?**

Published between 1964 & 1977

- *With copyright notice:*
 - 28 years original term
 - Automatic renewal of 67 years for second term.

Copyright & Copywrong: Fair Use and the Classroom



Copyright Basics – **How Long are Works PROTECTED?**

- Created before Jan 1, 1978
(manuscript)
 - Life + 70 years (or 12-31-2002), whichever is greater.
- Created before Jan 1, 1978 but published between 1978 and 2002.
 - Life + 70 years (or 12-31-2047), whichever is greater.

Copyright & Copywrong: Fair Use and the Classroom



Copyright Basics – How Long are Works PROTECTED?

- 1978+, life of author +70 years (for joint authors, it will be from the surviving author's death). Anonymous authors will have 95 years from first year of publication or 120 years from creation.

Copyright & Copywrong: Fair Use and the Classroom



Material that can be freely used

- Material where the copyright has expired (written at least 1923 or earlier)
- Government Documents
- Most Forms
- Material you produce (Class notes, etc.)*

Copyright & Copywrong: Fair Use and the Classroom



Material that can be freely used

- Shakespeare Plays online
 - <http://the-tech.mit.edu/Shakespeare/>
- Older Books online
 - <http://www.bartleby.com>
- Older Magazines online
 - <http://cdl.library.cornell.edu/moa/>
- PubMed
 - <http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?db=PubMed>
- NIH
 - <http://www.nih.gov/>

Copyright & Copywrog: Fair Use and the Classroom



Material that can be freely used – Not protected

Several categories of material are generally not eligible for federal copyright protection. These include among others:

- **Works that have not been fixed in a tangible form of expression** (for example, choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded)
- Titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or coloring; mere listings of ingredients or contents (**trademark...**)
- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration
- Works consisting **entirely** of information that is common property and containing no original authorship (for example: standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources)

Copyright & Copywrog: Fair Use and the Classroom



Fair Use

- What is the actual policy?
- Personal copies for research
- Redistribution – *THIS IS THE BIG ISSUE*
 - Why redistribute?
 - Ease for Students
 - Off campus/on campus proxy issues
 - Ensure that they get to the works
- **TEACH** (Technology, Education, and Copyright Harmonization Act)

Copyright & Copywrong: Fair Use and the Classroom



Fair Use

Sec # 107 of the U.S. Code

- 1st Factor: The character of the use
- 2nd Factor: Nature of the work to be used
- 3rd Factor: The amount used
- 4th Factor: Effect of the use on the market for or value of the work

Copyright & Copywrong: Fair Use and the Classroom



Fair Use

1st Factor: The character of the use

- This directly supports instruction
- Libraries make these resources available to support education. This is almost always YES

Copyright & Copywrog: Fair Use and the Classroom



Fair Use - 1st Factor: The character of the use

- Favoring Fair Use
 - Teaching (including multiple copies for classroom use)
 - Research
 - Scholarship
 - Nonprofit Educational Institution Use
 - Criticism
 - Comment
 - News reporting
 - Transformative or Productive use (changes the work for new utility)
 - Restricted access (to students or other appropriate group)
 - Parody
 - **many of the examples from IUPUI form. See reference at end of the slides.*

Copyright & Copywrog: Fair Use and the Classroom



Fair Use - 1st Factor: The character of the use

- *Opposing Fair Use*
 - Commercial activity – Training done for non-Mercy College people
 - Profiting from the use
 - Entertainment
 - Bad-faith behavior
 - Denying credit to original author

Copyright & Copywrong: Fair Use and the Classroom



Fair Use

2nd Factor: Nature of the work to be used

- Is the material creative in nature (fictional)
- Is the material factual in nature (non-fiction)
- Typically more freedom for factual documents and works than for creative works.

Copyright & Copywrong: Fair Use and the Classroom



Fair Use - 2nd Factor: Nature of the work to be used

- *Favoring Fair Use*
 - Published work
 - Factual or nonfiction based
 - Important to favored educational objectives (lots of latitude here)

Copyright & Copywrong: Fair Use and the Classroom



Fair Use - 2nd Factor: Nature of the work to be used

- *Opposing Fair Use*
 - Unpublished work (especially without author permission)
 - Highly creative work (art, music, novels, films, plays)
 - Fiction

Copyright & Copywrong: Fair Use and the Classroom



Fair Use

3rd Factor: The amount of the Copyrighted Work Used

- This is the tricky part
- Protect against copying the “heart of the work”
- No numerical limit, just “guidelines”
 - 1-2 chapters (not at a time – cannot rotate chapters)
 - 10% of the book
 - The less you copy, the more likely it is that you are OK!

Copyright & Copywrong: Fair Use and the Classroom



Fair Use – 3rd Factor: Amount of work used

- *Favoring Fair Use*
 - Small quantity
 - Portion used is not central or significant to entire work
 - Amount is appropriate for favored educational purpose

Copyright & Copywrong: Fair Use and the Classroom



Fair Use – 3rd Factor: Amount of work used

- *Opposing Fair Use*
 - Large portion or whole work used
 - Portion used is central to work or "heart of the work"

Copyright & Copywrong: Fair Use and the Classroom



Fair Use

- 4th Factor: Effect of the use on the market for or value of the work
- How will this activity diminish the sales of the product?
 - If something is available to UT students electronically, then there is *essentially no market impact.*
 - This is slightly different with NetLibrary.

Copyright & Copywrong: Fair Use and the Classroom



Fair Use

4th Factor: Effect of the use on the market for or value of the work

- This should *never* be used to allow students not to purchase the text book.
- This *could* be used to help soften the blow for books that are out of print and/or back ordered from the bookshop.

Copyright & Copywrong: Fair Use and the Classroom



Fair Use – 4th Factor: Effect on Market

- *Favoring Fair Use*
 - User owns lawfully acquired or purchased copy of original work (library/college owns a copy)
 - One or few copies made
 - No significant effect on the market or potential market for copyrighted work
 - No similar product marketed by the copyright holder
 - Lack of licensing mechanism
 - Persistent links can be setup to the document for current students and faculty.

Copyright & Copywrong: Fair Use and the Classroom



Fair Use – 4th Factor: Effect on Market

- *Opposing Fair Use*
 - Could replace sale of copyrighted work
 - Significantly impairs market or potential market for copyrighted work or derivative
 - Reasonably available licensing mechanism for use of the copyrighted work (Is there money?)
 - Affordable permission available for using work
 - Numerous copies made
 - You made it accessible on Web or in other public forum
 - Repeated or long-term use

Copyright & Copywrong: Fair Use and the Classroom



Fair Use – Protections (at UT)

- With Electronic Reserves, we:
 - Limit to those with valid UT ID
 - Only make available through the course record (cannot search directly in the catalog)
- But, we do not typically:
 - Secure rights when a use exceeds what we consider to be fair use
 - Put on a course password

Copyright & Copywrong: Fair Use and the Classroom



Putting it all together – Some Examples

- Putting scanned articles on CD and handing them out to students.
- Placing 100 articles from EJC on reserves.
- Showing part of a movie in a conversation about copyright?
- Scanning an entire out of print book for Electronic Reserves.
- Placing the New York Times for September 12, 2001 on electronic reserves.

Copyright & Copywrog: Fair Use and the Classroom



Putting it all together – Some Examples

- Copying every article in a reader and placing them on Electronic Reserves.
- For a presentation, we used Music sampling. Do we need to get permission?
- I want to distribute a copy of an article that I found embedded in a government document.
- Place a chart from an article in my class notes.
- Someone is going to publish my class notes, should I bother getting rights?

Copyright & Copywrog: Fair Use and the Classroom



Resources

U.S. Copyright Office (Library of Congress) (<http://www.copyright.gov>)

U.S. Copyright Office (Library of Congress) Copyright Basics
(<http://www.copyright.gov/circs/circ1.html>)

Copyright Crash Course (University of Texas)
(<http://www.utsystem.edu/ogc/intellectualproperty/cprtindx.htm>)

TEACH Toolkit (North Carolina State University)
(<http://www.lib.ncsu.edu/scc/legislative/teachkit/>)

Copyright & Fair Use (Stanford University) (<http://fairuse.stanford.edu/>)

Copyright & Copywrog: Fair Use and the Classroom



Resources

When U.S. Works Pass into Public Display (Lolly Gasaway,
UNC) (<http://www.unc.edu/~uncclng/public-d.htm>)

Applying Fair Use in the Development of Electronic Reserves
Systems (Association of Research Libraries)
(<http://www.arl.org/access/eres/eresfinalstmt.shtml>)

Copyright Clearance Center (<http://www.copyright.com>)

Copyright & Copywrog: Fair Use and the Classroom



Resources

Copyright Management Center (IUPUI)
(<http://www.copyright.iupui.edu/>)

Fair Use Checklist Excellent resource
<http://www.copyright.iupui.edu/checklist.pdf>

Copyright Quick Guide
<http://www.copyright.iupui.edu/quickguide.htm>

Copyright & Copywrong: Fair Use and the Classroom



Questions?

Corey Seeman
University of Toledo
Corey.seeman@utoledo.edu
419-530-2333

<http://library.utoledo.edu/userhomes/cseeman>

Copyright & Copywrong: Fair Use and the Classroom

