

# Copyrights and the Classroom

## *An Overview of Copyright Law and FSCJ Policy for Use of Copyrighted Materials*

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# Overview of Copyright Law

- Federal copyright law (Title 17 of the U.S. Code – The Copyright Act) protects original works of authorship including, but not limited to,:
  - Books, articles, and other written material, whether published or not
  - Music
  - Movies
  - Photographs
  - Software

# Overview of Copyright Law (cont'd)

- Author or creator of the work owns the copyright.
- Author or creator may transfer ownership to another person or entity, in which case, that person or entity is considered the owner.
- Owner of the copyright has the exclusive right to control how the work is used, distributed, and displayed.

# How is a Copyright Created?

- Copyright arises as soon as the work is fixed in a tangible medium.
  - Example: when the work is written, recorded, painted, photographed, or typed and saved to a computer hard drive or other data storage medium.
- There is no need to have the work officially published or to have the work officially registered by the U.S. Copyright Office.
- ***If you created, authored, or developed the work – you own it!***

# What is Protected by Copyright?

- Literary works and printed materials
- Dramatic works and accompanying music
- Photographs
- Musical works and accompanying works
- Artistic works (pictorial, graphic, and sculptural)
- Sound recordings
- Architectural works
- Software
- Content found on the Internet and Web pages (including text and images)

# What are the “Rights” Associated with Copy “Rights”?

- Under the copyright law, only copyright owners have the exclusive right to do or to allow others to the following:
  - *Reproduce* – make copies of their works publicly or privately.
  - *Adapt* – prepare additional works derived from their copyrighted work.
  - *Distribute* – disseminate copies of their works.
  - *Perform* – perform work publicly (At a location open to the public or to persons other than close family and social network. Does not include sound recordings.).
  - *Display* – Display their work publicly (applies to all works except sound recordings and architectural works).

# When I Buy a Book, Music CD, or Magazine, What am I Buying?

- You have only purchased a “copy” of the work, not the work itself.
- You have a limited right to use that one copy for personal use. Your use of that copy is limited to that one copy.
- You gain no other rights in the copyrighted work.
- You have the right to do as you wish with that copy, and only that copy. However, you do not have the right to make additional copies of your purchased copy, nor do you have the right to distribute additional copies of your purchased copy to the public.

# How Can I Use Copyrighted Materials in My Class?

- You can use copyrighted materials only if:
  - You and your students have legally purchased copies of the work.
  - OR
  - You have obtained permission from the copyright owner to make copies and use the materials in class.
  - OR
  - You don't need permission because an exemption applies.



# How Can I Use Copyrighted Materials in My Class? (cont'd)

- You don't need permission for the following:
  - Face-to-face teaching activities
  - Materials that are not copyrightable
  - Materials in the public domain
  - Fair use

# Exemption #1: Face-to-Face Teaching

- Copyright law provides a face-to-face teaching exemption (Section 110 of the Copyright Act).
- Allows faculty to use or display copyrighted materials during face-to-face teaching activities (doesn't require owners permission).
- Applies as long as there is no direct or indirect admission charge. It must be a regular part of the instructional activities and directly related to teaching content.

# Exemption #2: Non-copyrightable Materials

- The following items are not copyrightable and therefore can be used freely in your classroom without restriction:
  - Ideas (not fixed in a tangible medium)
  - Facts (or research of facts)
  - Discovery methods
  - Concepts
  - Methodology
  - Governmental works

# Exemption #3: The Public Domain

- What works are considered public domain?
  - Works that have expired copyrights (Copyrights expire 70 years after the owner's death.).
  - Governmental works.
  - Works that the author dedicated for the public domain to be use with no restrictions.
  - Works that do not meet the requirements of copyrights (e.g., ideas, facts, and research).
  - Remember it is the expression of ideas, facts, and research that may be copyrighted, not the ideas, facts, or research itself.

# Exemption #4: Fair Use

- The **Fair Use Doctrine** (Section 107 of the Copyright Act) provides for limited use of copyrighted materials for educational and research purposes without obtaining the permission of the copyright owner.

# Use of Copyrighted Works While Teaching

- If I only use copyrighted works while teaching, am I always covered under the Fair Use Doctrine?

*No, not necessarily.*

- When copyrighted works are used to teach, critique, research, report, or provide commentary, you must still use the works in a fair and reasonable manner.
- Fair and reasonable use is determined on a case-by-case basis, but there are guidelines.
- Fair Use does not give you an unlimited right to copy and distribute material at will, so be cautious.

# What is Considered Fair Use?

- There are four factors used to determine fair use:
  1. What is the character of the use?
    - Is it for an educational purpose?
    - Educational purposes are more likely to be considered fair use.
  2. What is the nature of the work to be used?
    - Is the work primarily imaginative or factual?
    - Use is more likely to be considered fair if the work is more factual in nature.

# What is Considered Fair Use? (cont'd)

## 3. What is the amount and substantiality of the portion to be used?

- Is it a small portion or the whole work?
- Using a portion of the work is more likely to be considered fair use.

## 4. Will the use negatively affect the value of the copyrighted material?

- Does the copied material compete with potential profits to the copyright owner?
- More likely to be considered fair use if it has no impact on potential profits of the copyright owner.
- Repeated use tends to affect market value.



# How Can I Use Copyrighted Materials and Still Comply with the Law?

General guidelines for using materials in the classroom:

1. A single copy of the materials for teaching purposes is generally okay.
2. Multiple copies are okay provided that:
  - The number of copies do not exceed more than one copy per student;
  - The inspiration and decision of the teacher to use the work and the moment of its use should be reasonably close in time; and
  - The work includes a notice of copyright.

# How Can I Use Copyrighted Materials and Still Comply with the Law? (cont'd)

General guidelines for using materials in the classroom:

3. Multiple copying and distribution of materials should not be used as a substitute for the purchase of books by students.
4. Do not copy and distribute consumable materials such as workbooks, standardized tests, test booklets, etc.
5. Printing companies may be able to help you with obtaining permissions for your course packs or for paying appropriate license fees.

# Best Practices

- Make a good faith effort to obtain the author's permission to:
  - Transmit or make multiple copies of copyrighted materials.
  - Use materials in a class for more than one semester.
  - Use materials for any use that falls outside the Fair Use guidelines.
- Whether you need permission or not, always provide attribution to the original author and display a copyright notice.

# Online and Distance Learning – Overview of the TEACH Act

- The Technology, Education, and Copyright Harmonization Act (TEACH Act – Section 110(2) of the Copyright Act) extends in a limited way the face-to-face exemption to distance learning activities.
- You can use copyrighted materials in distance learning or online teaching environments in the course of actual teaching performance.
- Copying and distribution of materials must still follow Fair Use guidelines, as well as TEACH Act guidelines.
- Given that the requirements of the Act are followed, transmissions (via Internet or video) of teaching performances using copyrighted materials may be made without obtaining permission from the copyright owner.

# Requirements of the TEACH Act

- The display of copyrighted materials must be:
  - A regular part of mediated instructional activity.
  - Made by, at the direction of, or under the supervision of the instructor.
  - Directly related and of material assistance to the content of the course.

# Requirements of the TEACH Act (cont'd)

- Further, for all materials available for download, the following technological restraints must be in effect:
  1. Content must be accessible only to those students who are enrolled in the course.
  2. Content must be accessible only for duration of a class session.
  3. To the extent technologically possible, content must be protected from further distribution (“downstream-controlled”).
  4. To the extent reasonably possible, content must not be subject to retention by students.

# Requirements of the TEACH Act (cont'd)

- Under Section 110(2)(D)(1) of the TEACH Act, all copyrighted materials displayed in a distance learning or online format must contain a copyright notice such as:

*“The materials on this course website are only for the use of students enrolled in this course for purposes associated with this course and may not be retained or further disseminated. The materials on this course website may be protected by copyright; any further use of this material may be in violation of federal copyright law.”*

# Complying with TEACH Act

- **Do:**
  - Notify students that works used are subject to copyright protection.
  - Supervise digital performance or display. Make it an integral part of instructional activity.
  - Work with FSCJ IT department to limit access to the works.
  - Use of excerpts from books, pieces of music, photograph collections or a motion pictures are generally acceptable.
- **Don't:**
  - Upload textbooks, course packs, or other resources typically purchased by students for review outside the classroom.
  - Transmit or upload materials specifically marketed for distance education courses.
  - Use pirated works or works that you have reason to know were illegally made.
  - Play an entire motion picture or perform an entire play during a class that will then be transmitted. Only a reasonable and limited portion of these types of works can be used.
- ***Rule of Thumb: distributing copyrighted material should not be a substitute for the purchase of a book by the students.***



# Fair Use of Copied Materials Posted in Blackboard as Course Documents

- Faculty can incorporate photo images of copyrighted material in their online courses, but should use the following guidelines:
  - Use a small amount in relation to the whole work – single chapter of a book, article, or few photos from a larger collection.
  - If pages or images can be copied, make them available to students on Blackboard for a limited time.
  - Put a copyright notice (©, year of 1st publication and name of copyright holder) on pages or images with a warning against copying or distributing to others.
  - If images will be disseminated to broader audience than students in the course, or will be developed into a commercial product, get copyright permissions at the start of the project.
  - Faculty can alter copyrighted works if the alterations are consistent with the course objectives. Inform students of the alterations.

# Using Copyrighted Materials in Multimedia Projects

- *Can I use copyrighted materials in my multimedia projects, such as a PowerPoint presentation?*
  - Yes. Faculty members can incorporate portions of copyrighted materials into PowerPoint presentations and other multimedia projects for educational purposes, but they should follow the Fair Use guidelines, such as:
    - *Instruct students face-to-face.*
    - *Assign or direct students to self-study the material.*
    - *Use limited portions of the material.*
    - *Provide copyright attribution.*

# Using Copyrighted Materials in Multimedia Projects (cont'd)

- *When I develop my multimedia projects, can I alter portions of other's copyrighted materials?*
  - Yes. But make sure that the alterations:
    - *Are consistent with your instructional objectives.*
    - *Are noted within the multimedia project.*

# Copyright Infringement

- If you don't follow the rules, you could be committing copyright infringement!
- *What does it mean to infringe on someone's copyright?*
  - Copyright owners have exclusive rights to copy, adapt, perform, display, and disseminate their own works.
  - You must obtain the owner's permission to use copyrighted material, or if you don't obtain permission, your use must fall into an exemption (e.g, Fair Use).
  - If you don't have permission or your use is not an exemption, you may be committing copyright infringement.

Copyright infringement may result in significant civil and criminal penalties for both you and the College.

# Avoiding Copyright Infringement

- Make sure your educational use of copyrighted materials stays within the boundaries of Fair Use and the TEACH Act:
  - Use copyrighted materials only for teaching, research, parody, criticism, news reporting, or commentary.
  - Use just enough to accomplish your instructional objectives.
  - Give notice of author attribution, copyright information, and warnings against copyright infringement.
  - Take precautions to limit access to materials by students in the course for that semester (i.e., password protections, encryptions, warnings against copying and distributing).

# Avoiding Copyright Infringement (cont'd)

- Make sure your educational use of copyrighted materials stays within the boundaries of Fair Use and the TEACH Act:
  - Get permission for any other use if FSCJ does not have a license to use and keep written permission on file.
  - Make sure your use does not deprive the copyright owner of profits (either by making a profit off the work or by repeatedly copying the entire work or considerable portions allowing for a substantial benefit of the work without purchasing it).

Any questions about copyrights and the use of copyrighted materials in your classroom may be directed to the Office of the General Counsel.

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