#### COPYRIGHT BOOT CAMP

2019 MIAMI UNIVERSITY LIBRARIES COPYRIGHT CONFERENCE

#### **OVERVIEW**

- Copyright Basics
- Copyright Exceptions
- Putting it all Together

#### PLEASE NOTE

The information provided in this presentation should not be construed as legal advice. If you have a legal question you should speak with an attorney.

# COPYRIGHT BASICS

#### ORIGINS OF U.S. COPYRIGHT LAW

Article 1 Section 8 of the U.S. Constitution and represents the founding fathers effort "To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

#### THE LAW

Copyright is codified in title 17 of the U. S. Code

- Definitions
- Scope
- Rights & Limitations
- Exceptions

http://www.copyright.gov/title17/

#### SECURING COPYRIGHT

Copyright protection subsists in "in original works of authorship" (not copied) which are "fixed in any tangible medium of expression."

17 U.S.C. § 102

#### ORIGINALITY

"Original, as the term is used in copyright, means only that the work was independently created by the author (as opposed to copied from other works), and that it possesses at least some minimal degree of creativity."

-Justice O'Connor, Fiest v. Rural

https://www.youtube.com/watch?v=oOIDewpCfZ

#### **FIXATION**

A work is "fixed" in a tangible medium of expression when its embodiment in a copy or phonorecord...is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration."

17 U.S.C. § 101

#### ORIGINAL & FIXED

- We all own thousands of copyrights.
- Much of what we encounter in our daily lives is protected by copyright.
- Copyright notice (e.g. © 2019 by Carla Myers) is no longer required!

#### REGISTRATION

Registration and the inclusion of a copyright notice is no longer necessary, but does have some benefits

- Documents your ownership in the copyright of the work
- Allows you to recover statutory damages if suing someone for copyright infringement.

http://www.copyright.gov/eco/

 Literary works (fiction/nonfiction, poetry, textbooks, reference works, directories, catalogs, advertising copy, compilations of information, computer programs and databases)

 Musical works (this generally refers to music scores & accompanying words)

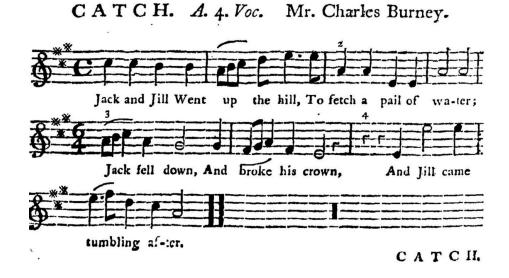


Photo credit: "Jack and Jill went up the hill", set to music by <a href="Charles Burney">Charles Burney</a>.

Dramatic works
 (plays, film, radio, and television scripts)

Photo credit: Oscar Wilde, The Importance of Being Earnest (public domain)

The Importance of Being Earnest

13/10/2015 21:30

#### THE PERSONS IN THE PLAY

John Worthing, J.F., called Jack
Algernon Moncrieff, his friend
Rev. Canon Chasuble, d.d.
Merriman, Jack's butler
Lane, Algernon's manservant
Lady Bracknell, Algernon's aunt
The Hon. Gwendolen Fairfax, her daughter
Cecily Cardew, Jack's ward

#### MISS PRISM, Cecily's governess THE SCENES OF THE PLAY

ACT I. Algernon Moncrieff's Flat in Half-Moon Street, Westminster.

ACT II. The Garden at the Manor House, Woolton, Hertfordshire

ACT III. Drawing-Room at the Manor House, Woolton, Hertfordshire.

TIME: The Present.

#### FIRST PERFORMANCE

London, St James's Theatre.

Lessee and Manager: Mr. George Alexander.

February 14th, 1895

John Worthing, J.P.: Mr. George Alexander. Algernon Moncrieff: Mr. Allen Aynesworth. Mr. H. H. Vincent Rev. Canon Chasuble, D.D.: Merriman: Mr. Frank Dyall. Mr. F. Kinsey Peile. Lady Bracknell: Miss Rose Leclercq. Hon. Gwendolen Fairfax: Miss Irene Vanbrugh Cecily Cardew: Miss Evelyn Millard. Miss Prism: Mrs. George Canninge.

This playscript was created from the Project Gutenberg transcript by David Price, email ccx074@coventry.ac.uk, from the 1915 Methuen & Co edition. Set in 12pt Palatino type.

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Pantomimes and choreography

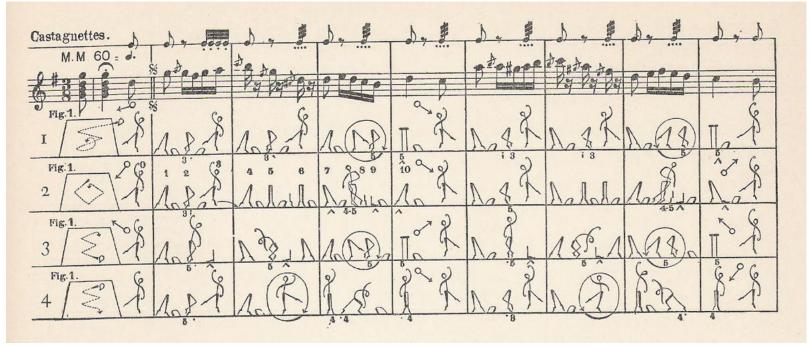


Photo credit: Zorn Cachucha, originally uploaded by <u>Huster</u> at <u>French Wikipedia</u>. - Transferred from <u>fr.wikipedia</u> to Commons by <u>Spoladore</u> using <u>CommonsHelper</u>, licensed under a <u>CC BY-SA</u> <u>3.0</u> license

Pictorial, graphic, and sculptural works (art)

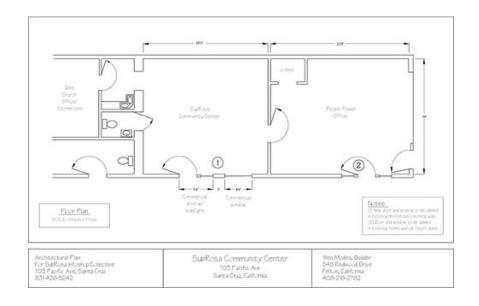


"Cheetah" by DappleRose is licensed under CC BY-NC-ND 2.0

 Motion pictures and other audiovisual works (film, television show, videogame, etc.)

 Sound recording (performances of musical works, audio recordings of literary works)

 Architectural works (just the designs, not the building its self!)



"Architect Floor Plan" by Wes Modes is licensed under CC BY-NC-ND 2.0

Ideas—no one can copyright an idea, however your expression of an idea may be protectable.

Making ideas freely available for anyone to pursue "promotes the progress of...useful arts"

#### CASE STUDY: MUSIC

Four Chords, by Axis of Awesome: https://www.youtube.com/watch?v=oOIDewpCf ZQ

Facts-No one may claim originality as to facts. This is because facts do not owe their origin to an act of authorship. The distinction is one between creation and discovery. The first person to find and report a fact has not created it, they have merely discovered its existence.

—Fiest v. Rural



Photo credit: US Census

Works in the public domain, which include...

- Works whose copyright has expired
- Works created by the U.S. Government

- Works that are not fixed in a tangible medium of expression do not have copyright protection.
- Names, phrases, slogans, titles, symbols (though these could be protected under trademark).
- Mere variation of typographic ornamentation, lettering, or coloring.
- Simple listings, e.g. table of contents, recipe ingredients (think facts!)
- Procedures, methods, processes (though these could be protected under patent or trade secret law).
- Works consisting of common facts, e.g. calendar, height/weight chart, ruler.

## **EXCEPTIONS!**

#### **COPYRIGHT & FACTS**

- You could have copyright for your writings about facts
  - Textbook
  - Nonfiction
  - Scholarly article
  - Additions to factual lists such as recopies
- Could secure copyright for your arrangement of facts/data
  - Section of facts and data used in an annotated bibliography
  - Arrangement and layout of a pie chart or graph

# COPYRIGHT IN NEW EXPRESSIONS OF OR COMPONENTS ADDED TO PUBLIC DOMAIN WORKS

## WORKS CREATED BY EMPLOYEES OF THE U.S. GOVERNMENT COULD HAVE COPYRIGHTABLE COMPONENTS



Photo Credit: nps.gov

#### COPYRIGHT IN GRAPHIC DESIGN

Bringing shapes, lettering, and coloring together in a way that is protectable.

#### **COPYRIGHT OWNERSHIP**

#### THE RIGHTSHOLDER IS...

Generally, the person who creates the work.

Joint Authorship-When two or more authors work together to create a work the copyright is shared between them.

- Authors must decide to work collaboratively
- Each author must contribute significantly to the copyrightable expression to the work
- "Merged into inseparable or interdependent parts of a unitary whole"

#### WORKS MADE FOR HIRE

- Works created by the employee in the scope of their employment
  - Generally, the copyright will rest with the employer
- Works created by independent contractors
  - Even with commissioned works, the parties must agree in writing ahead of time who will hold the rights to the work

### **DURATION OF COPYRIGHT**

#### **HOW LONG DOES COPYRIGHT LAST?**

Works created after Jan. 1, 1978 are protected for the life of the author plus 70 years

- Join authorship life of last surviving author +70 years
- Works for Hire 95 years from publication or 120 years from creation, whichever is shorter

For older works, it depends...

# WORKS PUBLISHED BEFORE JANUARY 1, 1924

In the US, works <u>published</u> before 1924 are in the public domain. Use them anyway you like!

- Republish, make a movie or play, add commentary
- Original work is still not protected, but your expression of it is
- Always, always give proper attribution!

#### IN LIMBO

Works published between 1924-1978

- It depends!
  - Inclusion of copyright notice?
  - Was the copyright renewed?
- If in doubt, treat as a protected work

https://copyright.cornell.edu/publicdomain

### IN LIMBO

- Unpublished works created prior to January 1, 1978 are protected for the life of the author +70 years
- Join authorship life of last surviving author+70 years
- Works for Hire 95 years from publication or 120 years from creation, whichever is shorter

## **AUTHORS RIGHTS**

### **AUTHORS' RIGHTS**

Owner of a protected work is provided with certain right....

- The right to reproduce (copy) the work
- The right to distribute the work (share/publish/sell)

### DERIVATIVE WORKS

Reconstructing an original work to express it in a different way, e.g. *Eragon, by Christopher Paolini* 

### PUBLIC DISPLAY

To "display" a work means to show a copy of it, either directly or by means of a film, slide, TV image, or any other device or process.

In the case of motion picture or visual work, to show individual images nonsequentially

### **Examples of Public Displays**

- Showing images in the classroom
- Including a film still as part of a movie review posted to a website

### PUBLIC PERFORMANCE

To "perform" a work means to recite, render, play, dance, or act it, either directly or by means of any device or process

In the case of a motion picture or other audiovisual works, to show its images in sequence or to make accompanying sounds audible.

#### **Examples of Public Performances**

- Acting out a play
- Hosting a film screening
- Musical performance
- Story time!

### **COPYRIGHT INFRINGEMENT**

### COMMON MISCONCEPTIONS

- If it's on the internet I can use it however I want.
- If it's a library/personal/not-for-profit use I can use anything I want, however I want, right?
- So long as I give credit to the person who created the work I don't have to worry about copyright infringement.
- I'll never get caught!

### INFRINGEMENT

Copyright infringement occurs when we take advantage of one of the rights granted to creators under the law without their authorization.

- 1. Reproduce works
- Make derivatives
- 3. Distribute copies
- 4. Perform the work publicly
- 5. Display the work publicly
- 6. In the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

### SUMMARY

### **BASICS RECAP**

- It's very easy to secure copyright
- Many different types of works are protected
- Work have copyright protection for a long time
- It's easy to infringe!

### YIKES!

 Fortunately there are exceptions written into the law that allow us to reuse the works of others in certain situations

### **EXCEPTIONS!**

### LEGAL EXCEPTIONS

Many exceptions to copyright, with a few specific to education and libraries

- Fair use
- Library copying
- First sale doctrine
- Face-to-face teaching
- Displays and performances for distance learning (TEACH Act)
- Special formats for those with disabilities
- Digital Millennium Copyright Act

### FAIR USE

17 USC 107

### 17 U.S.C. § 107

Notwithstanding the provisions of sections <u>106</u> and <u>106A</u>, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

## FACTOR 1: PURPOSE & CHARACTER OF THE USE

- Nonprofit educational use is heavily favored over a commercial use
- Assigned material vs. being used more for entertainment

### TRANSFORMATIVE USE

Have you turned it the original into something new by adding new expression or meaning?

Judge Pierre Leval provides a wonderful definition of "transformative use" in his article *Toward a Fair Use Standard*, which can be found here:

http://docs.law.gwu.edu/facweb/claw/levalfrustd.htm. He states that a transformative use...

"must employ the quoted matter in a different manner or for a different purpose from the original. A quotation of copyrighted material that merely repackages or republishes the original is unlikely to pass the test; in Justice Story's words, it would merely "supersede the objects" of the original. If, on the other hand, the secondary use adds value to the original--if the quoted matter is used as raw material, transformed in the creation of new information, new aesthetics, new insights and understandings-- this is the very type of activity that the fair use doctrine intends to protect for the enrichment of society."

### EXAMPLES OF TRANSFORMATIVE USE-MUSIC

#### Musical Mash-up

 Glee--The Way You Look Tonight / You're Never Fully Dressed Without A Smile (Glee Cast Version)

### EXAMPLES OF TRANSFORMATIVE USE-ART

Parody

## EXAMPLES OF TRANSFORMATIVE USE IN PUBLICATION

In Publication

Bill Graham Archives v. Dorling Kindersley

## EXAMPLES OF CLASSROOM TRANSFORMATIVE USE

Using a popular movie to teach a subject, e.g. using clips from World War Z to discuss disaster response.

# FACTOR 2: THE NATURE OF THE WORK

Explores the characteristics of the work being used

- Fiction vs. nonfiction
- Published vs. unpublished
- Consumable?

## FACTOR 3: THE AMOUNT & SUBSTANTIALITY OF THE PORTION USED

Looks at quantity and quality

"There are no absolute rules as to how much of a copyrighted work may be copied and still be considered a fair use"

-Maxtone-Graham v. Burchael

# USING A LOT-SUNTRUST BANK V. HOUGHTON MIFFLIN

SunTrust alleged that TWDG violated the trust's copyright interests by explicitly referring to GWTW in the foreword; copying core characters, traits, and relationships; copying and summarizing famous scenes; and copying verbatim certain dialogues and descriptions.

District Court ruled in SunTrust's favor.

Houghton Mifflin appealed to the Circuit Court (11th)

## 11<sup>TH</sup> CIRCUIT COURT OF APPEALS RULING

- 1. Parody—commercial but transformative
- Original work of fiction deserves high degree of protection, but parodies are almost always made publically known, expressive works.
- The court could not determine "in any conclusive way" whether the quantity and value of the materials used was reasonable in relation to the purpose of the copying.
- 4. No proof of TWDG by displacing sales for GWTW

# USING A LITTLE--HARPER & ROW V. NATION ENTERPRISES

#### District Court found infringement

- Derivative work
- Right of first publication
- News reporting
- Covering facts

### SUPREME COURT RULING

- 1. News reporting, but unfair commercial use due to intent to supplant "first publication"
- 2. Informative work
- 3. Small amount, but the heart of the work and...
- 4. Serious market erosion

## BEST ADVICE REGARDING THE "AMOUNT" USED

Consider the amount needed to serve the purpose of the use in relation to the work being used. This is a judgment call, and one you must be prepared to justify should your use of the work ever come into question!

- If straight copying or quoting, less is better
- If transformative, can usually justify more!

### BEWARE OF THE GUIDELINES!

#### Classroom Photocopying Guidelines (1976)

- Use must be "spontaneous"
- Brevity...
  - Can use 1 chapter or 10% of a work
  - No more than 250 words from a poem
  - Only 1 chart, picture or diagram from a work
- Must seek permission for subsequent use
- Carry no force of law and provide no safe harbor against infringement!

# FACTOR 4: EFFECT ON THE MARKET

Is your use resulting in lost revenue for the rightsholder?

- Occurs when use replaces sale of the work
- This factor often carries a lot of weight, especially when looking at commercial uses
- Can weigh in favor if use is transformative (parody, mash-up)

Consider that your use could actually help the market for the item! (comment, critique)

### **BUT IT'S SO CONFUSING!**

Congress deliberately created fair use to flexible so that it could apply to many different situations. Unfortunately though, this can lead to uncertainty regarding its application.

### USING FAIR USE TOOLS

- These decisions are very subjective and need to be made by the person utilizing the protected work
- Only work if you are completely honest!
- Keep a copy
  - Record of fair use decision
  - Can be used as a legal document

### FAIR USE TOOLS

- Ken Crews' Fair Use Checklist: <u>http://copyright.columbia.edu/copyright/fair-use/fair-use-checklist/</u>
- ALA Fair Use Evaluator:
  <a href="http://librarycopyright.net/fairuse/">http://librarycopyright.net/fairuse/</a>
- Thinking Through Fair Use (U of Minnesota)
   http://www.lib.umn.edu/copyright/fairthoughts

# LIBRARY COPYING FOR RESEARCH & PRESERVATION

17 U.S.C. § 108

### WHAT IT ALLOWS

Section 108 allows libraries to make copies of protected works for the purpose of

- Private study
- 2. Preservation
- 3. InterLibrary Loan (ILL)

#### A few requirements:

- Library must be open to the public
- Copies are not made for commercial purposes
- Library does not engage in bulk distribution of copies
- Each copy includes a copyright notice

# 17 U.S.C. § 108 MAKING COPIES FOR PRIVATE STUDY

# TYPES OF WORKS THAT CAN BE COPIED

- Literary works, including magazines, journals, newspapers, and books
- Illustrations, pictures, charts, and graphs that accompany literary works
- Those audiovisual works that deal with the news

# TYPES OF WORKS THAT CANNOT BE COPIED

- Musical compositions/scores
- Most art
- Most audiovisual works, including movies

#### MAKING COPIES FOR PRIVATE STUDY

- The copy becomes the property of the user
- You have no reason to suspect that the patron will be using the copy for any other purpose besides private study
- Your library displays a copyright warning where requests are submitted (online or on paper) and on the work being provided to the patron
- After a reasonable investigation the library can conclude that a copy cannot be obtained at a reasonable price (when requesting a substantial portion of the item or a full copy)

# 17 U.S.C. § 108 MAKING COPIES FOR PRESERVATION

### TYPES OF WORKS THAT CAN BE COPIED

- Any type of material including art, audiovisual works, and musical scores
- Number of copies
- Availability of copies on the "premises"

#### MAKING COPIES FOR PRESERVATION-UNPUBLISHED WORKS

- The item being reproduced is currently part of the collection of their collection
- The copy is for...
  - Preservation (it is, or is on the verge of falling apart)
  - Security (you don't want a patron handling the original)
  - Deposit in another library or archive who has an interest in the item

#### MAKING COPIES FOR PRESERVATION-PUBLISHED WORKS

- It is being used to replace a damaged, deteriorating, lost, or stolen copy
- If the work is in a format that has become obsolete which, under the law, means that the technology needed to play or perform the work is no longer manufactured or is not readily available for purchase
- They conclude that, after performing a reasonable investigation, an unused replacement copy cannot be obtained at a reasonable price

# 17 U.S.C. § 108 MAKING COPIES FOR INTERLIBRARY LOAN

### MAKING COPIES FOR INTERLIBRARY LOAN

- When you're lending: the rules are the same as for private study
- When you're borrowing: make sure that your practices are not substituting for a subscription to a periodical or purchase of a work
- CONTU Guidelines, or 'Rule of 5:' Up to 5 copies from the most recent 5 years of a journal title-another guideline, not law!

### 17 U.S.C. § 108 COPYING EQUIPMENT

#### COPYING EQUIPMENT

- Placing a notice regarding copyright on duplication equipment, including printers, photocopiers, scanners, and media duplication equipment can help release your institution from liability.
- See 17 USC 108(f)(1)

### 17 U.S.C. § 109 FIRST SALE DOCTRINE

#### FIRST SALE DOCTRINE

Notwithstanding the provisions of section 106(3), the owner of a particular copy or phonorecord lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord.

#### ESSENTIALLY

When you own a copyrighted work that is "lawfully made under this title" you can lend, sell, or dispose of it without having to obtain permission from (or pay a fee to) the rightsholder.

#### This provision allows....

- Libraries to lend items
- Folks to sell copyrighted item at garage sales, on eBay
- You to donate copyrighted items
- Remember that owning a copy of a work is not the same as owning the copyright in it!
- You can sign-away this right via a license

### FACE-TO-FACE EDUCATION

17 USC 110(1)

#### FACE-TO-FACE TEACHING

Notwithstanding the provisions of § 106 the following are not infringements of copyright: performance or display of a work by instructors or pupils in the course of face-toface teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made.

#### BREAKING IT DOWN

- The performance or display of a work
- By instructors or pupils
- In the course of face-to-face teaching activities
- Of a nonprofit educational institution
- In a classroom or similar place devoted to instruction
- Are not infringements of copyright

#### BREAKING IT DOWN

#### Unless!

- In the case of a <u>motion picture</u> or other <u>audiovisual</u> <u>work</u>
- The performance of the work, (e.g. "playing it")
- Or the display of individual images
- Is given by means of a copy that was not lawfully made under this title (U.S. Copyright Law, Title 17 United States Code) and that the person responsible for the performance knew or had reason to believe was not lawfully made.

### WHAT DOES 'LAWFULLY ACQUIRED' MEAN HERE?

- A copy you have purchased
- A copy owned by the library or borrowed through a legitimate library lending service such a consortium partner or interlibrary loan
- A copy the you have borrowed from a colleague
- A copy you have acquired lawfully for your own personal research (conference materials, etc.)

#### RECOMMENDATIONS

- Work with faculty to acquire items for the library's collection
- Help them understand options for requesting works through consortium/ILL

### THE TEACH ACT

17 USC 110(2)

#### THE TEACH ACT

- The Technology, Education and Copyright Harmonization Act, or TEACH Act was passed by Congress in 2002 to address copyright issues in distance education
- Found (mostly) in Section 110(2) of US copyright law

Notwithstanding the provisions of section 106, the following are not infringements of copyright

- The performance of a nondramatic literary or musical work;
- Or reasonable and limited portions of any other work;
- Or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session
- by or in the course of a transmission, if—

- The performance or display is made by, at the direction of, or under the actual supervision of an instructor
- [Is] as an integral part of a class session offered
- As a regular part of the systematic mediated instructional activities of a governmental body or an accredited nonprofit educational institution;
- The performance or display is directly related and of material assistance to the teaching content of the transmission;

- The transmission is made solely for, and, to the extent technologically feasible, the reception of such transmission is limited to—
  - Students officially enrolled in the course for which the transmission is made; or
  - Officers or employees of governmental bodies as a part of their official duties or employment; and

- In the case of digital transmissions, applies technological measures that reasonably prevent—
  - [The] retention of the work in accessible form by recipients of the transmission from the transmitting body or institution for longer than the class session; and
  - Unauthorized further dissemination of the work in accessible form by such recipients to others; and
  - Does not engage in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent such retention or unauthorized further dissemination;

- The transmitting body or institution—
  - Institutes policies regarding copyright
  - Provides informational materials to faculty, students, and relevant staff members that accurately describe, and promote compliance with, the laws of the United States relating to copyright, and
  - Provides notice to students that materials used in connection with the course may be subject to copyright protection

- Except with respect to a work produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks
- Or a performance or display that is given by means of a copy or phonorecord that is not lawfully made and acquired under this title, and the transmitting government body or accredited nonprofit educational institution knew or had reason to believe was not lawfully made and acquired

OY!

#### **DEFINITIONS**

- Perform-recite, render, play, dance, or act a work, or, in the case of a motion picture to show images in any sequence or to make accompanying sounds audible.
- **Display**-to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process. Or, in the case of a motion picture or other audiovisual work, to show still images (frames).

#### **DEFINITIONS**

- Nondramatic Literary Work Generally, works that are intended to be read.
  - Examples include fiction and nonfiction, poetry, reference work.
- Nondramatic Musical Work playing of instruments, singing of songs

#### **DEFINITIONS**

- Dramatic Works Works that portray a story are intended to be performed for an audience.
  - Frequently <u>represents the action as it occurs</u> rather than simply narrating or describing the action.
  - Examples of dramatic literary works include plays and radio and television scripts
  - Examples of dramatic musical works include opera and musicals.
- Any Other Work motion pictures and other audiovisual works, sound recordings.

# WHAT IS REASONABLE AND LIMITED?

A report put forward by the Senate in 2001 states that "What constitutes a "reasonable and limited" portion should take into account both the nature of the market for that type of work and the pedagogical purposes of the performance."

U.S. Congress, Senate, Technology, Education and Copyright Harmonization
 Act of 2001. 107th Cong., 1st sess.,

2001, S. Doc. 7, serial 107-31, 7-8

A Congressional Research Service report put forward in 2006 states "the exhibition of an entire film may possibly constitute a 'reasonable and limited' demonstration if the film's entire viewing is exceedingly relevant toward achieving an educational goal; however, the likelihood of an entire film portrayal being 'reasonable and limited' may be rare."

 Melville B. Nimmer & David Nimmer, Nimmer on Copyright § 8.15[C][2][a] (2006).

#### WHAT THE TEACH ACT ALLOWS

The display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session.

# WHAT THE TEACH ACT DOES NOT ALLOW

- Digitization of works produced or marketed primarily for online education
- Works that are made from a copy that was not lawfully acquired –OR—that the transmitter knew or had reason to believe was not lawfully made and acquired

### TEACH ACT COMPLIANCE

- ✓ Nonprofit educational institution
- ✓ At an institutional level, copyright policies, notifications, and educational programming must be in place to help establish the appropriate use of protected works in an educational setting
- ✓ Technological measures must be put into place by system administrators to limit access to only those students enrolled in a course
- ✓ Must find ways to prevent students from retaining works "for longer than the class session" and to limit the "unauthorized further dissemination" of copyright works outside the class learning environment

### RECOMMENDATIONS

- Only digitize as much as needed to teach a work (clips), though full work may be justifiable!
- Stream all audio and media files
- Use a Content Management System/Learning Management System to limit access
- Work with school administrators to provide some type of copyright education

## REPRODUCTION FOR BLIND OR OTHER PEOPLE WITH DISABILITIES

17 USC 121

### **SECTION 121**

- (a) Notwithstanding the provisions of section 106, it is not an infringement of copyright for an authorized entity to reproduce or to distribute in the United States copies or phonorecords of a previously published literary work or of a previously published musical work that has been fixed in the form of text or notation if such copies or phonorecords are reproduced or distributed in accessible formats exclusively for use by eligible persons.
- (b)(1) Copies or phonorecords to which this section applies shall—
  - (A) not be reproduced or distributed in the United States in a format other than an accessible format exclusively for use by eligible persons;
  - (B) bear a notice that any further reproduction or distribution in a format other than an accessible format is an infringement; and
  - (C) include a copyright notice identifying the copyright owner and the date of the original publication.

- (1) 'accessible format' means an alternative manner or form that gives an eligible person access to the work when the copy or phonorecord in the accessible format is used exclusively by the eligible person to permit him or her to have access as feasibly and comfortably as a person without such disability as described in paragraph (3);
- (2) 'authorized entity' means a nonprofit organization or a governmental agency that has a primary mission to provide specialized services relating to training, education, or adaptive reading or information access needs of blind or other persons with disabilities;
- (3) 'eligible person' means an individual who, regardless of any other disability—
  - (A) is blind;
  - (B) has a visual impairment or perceptual or reading disability that cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or
  - (C) is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading; and

### 121A

- (a) Notwithstanding the provisions of sections 106 and 602, it is not an infringement of copyright for an authorized entity, acting pursuant to this section, to export copies or phonorecords of a previously published literary work or of a previously published musical work that has been fixed in the form of text or notation in accessible formats to another country when the exportation is made either to—
  - (1) an authorized entity located in a country that is a Party to the Marrakesh Treaty; or
  - (2) an eligible person in a country that is a Party to the Marrakesh Treaty,

if prior to the exportation of such copies or phonorecords, the authorized entity engaged in the exportation did not know or have reasonable grounds to know that the copies or phonorecords would be used other than by eligible persons.

- (b) Notwithstanding the provisions of sections 106 and 602, it is not an infringement of copyright for an authorized entity or an eligible person, or someone acting on behalf of an eligible person, acting pursuant to this section, to import copies or phonorecords of a previously published literary work or of a previously published musical work that has been fixed in the form of text or notation in accessible formats.
- (c) In conducting activities under subsection (a) or (b), an authorized entity shall establish and follow its own practices, in keeping with its particular circumstances, to—
  - (1) establish that the persons the authorized entity serves are eligible persons;
  - (2) limit to eligible persons and authorized entities the distribution of accessible format copies by the authorized entity;
  - (3) discourage the reproduction and distribution of unauthorized copies;
  - (4) maintain due care in, and records of, the handling of copies of works by the authorized entity, while respecting the privacy of eligible persons on an equal basis with others; and
  - (5) facilitate effective cross-border exchange of accessible format copies by making publicly available—
    - (A) the titles of works for which the authorized entity has accessible format copies or phonorecords and the specific accessible formats in which they are available; and
    - (B) information on the policies, practices, and authorized entity partners of the authorized entity for the cross-border exchange of accessible format copies.

### 17 U.S.C. § 1201 DIGITAL MILLENNIUM COPYRIGHT ACT

### **DMCA**

#### "Anticircumvention" law

- Prohibits circumvention of technological measures which protect access to copyrighted works
- Can include circumventing..
  - Encryption on a CD or DVD
  - Password protection on a website
  - Technology "locking" a device
- Also prohibits creation, sharing, and use to products and programs which allow circumvention\*

### DMCA AND THE EXCEPTIONS

- Chamberlain, Inc. V. Skylink Technologies only applies to unauthorized uses
- MDY v. Blizzard, 2010; Universal Studios, Inc.
   v. Corley, 2001 fair use is not an exception to the DMCA

### **GOOD NEWS**

- Exceptions written into the law
- New exceptions considered by the Registrar of Copyrights and the Librarian of Congress every 3 years
- Need an exception...pursue it!

### **COPYRIGHT & YOUR LIBRARY**

### **COPYRIGHT & LIBRARIES**

### Librarians can't escape it!

- Circulating items
- InterLibrary Loan (borrowing and lending)
- Course reserve services
- Duplication equipment
- License agreements for electronic resources
- Archives
- Preservation
- Online access
- Patrons with disabilities

### YOUR ROLE

- Be aware of library copyright issues
- Understand how the law applies to libraries
- Understand which laws may apply to the situation at hand
- Have sound copyright policies to guide your use

### LIBRARY COPYRIGHT POLICIES

### COPYRIGHT POLICIES

Having intuitional copyright policies can provide guidance for staff when using copyrighted works

- Should be written in plain language so that it's easily understandable
- Work with your institution's attorney
- Update often!

### HAVE POLICIES FOR..

- Library copying for preservation and private study
- InterlibraryLoan
- Use of orphan works-those works for which the rightsholder cannot be identified
- Licensing materials
- Digitization projects
- Accepting archival donations

### COPYRIGHT POLICIES FOR MAKING COPIES FOR PRESERVATION & PRIVATE STUDY

- Reproduction by Libraries and Archives (17 U.S.C § 108)
- Fair Use (17 U.S.C § 107)

# COPYRIGHT POLICIES FOR INTERLIBRARY LOAN

- First Sale Doctrine
- Rule of 5 vs. 17 U.S.C § 108
- Make sure you are not signing away your ability to lend through ILL in your license agreements!

# COPYRIGHT POLICIES FOR ORPHAN WORKS

Works for which the rightsholder cannot be identified

- Look to legal exceptions to make use of work
- No pending legislation regarding orphan works

# COPYRIGHT POLICIES FOR LICENSING MATERIALS

It is critically important that you negotiate license agreements, especially for electronic works.

- Negotiate, negotiate, negotiate!
- License will trump rights afforded under the law!
- Read, negotiate, track.

# COPYRIGHT POLICIES FOR LIBRARY DIGITIZATION PROJECTS

You may need to write a new policy for each project!

## COPYRIGHT POLICIES FOR DONOR AGREEMENTS FOR ARCHIVES

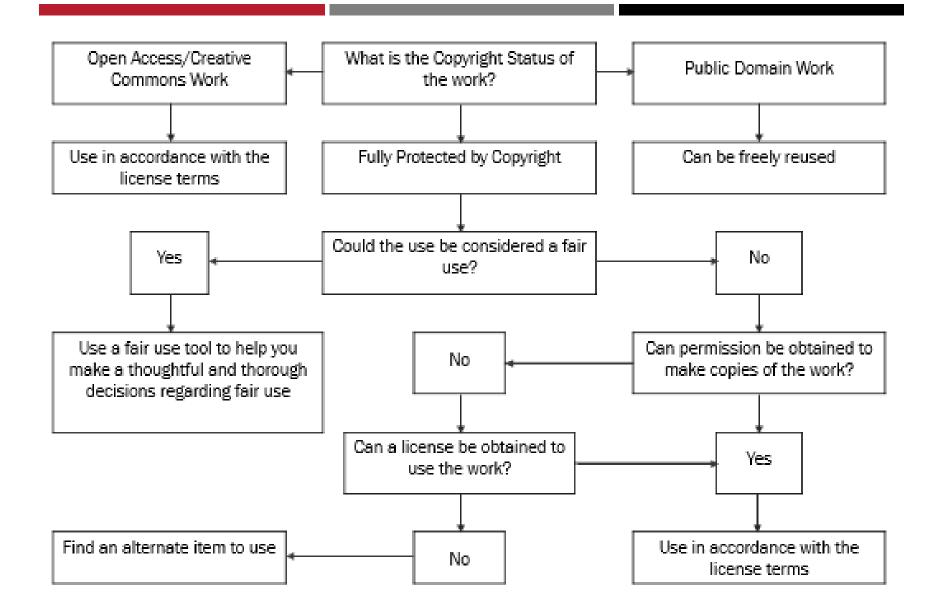
- Donations of rare/unique/historical items to your archives can be very exciting
- Does the person donating the items also own the copyright?
- If not, who does?
- If so, are they willing to transfer it to you?

### 3D PRINTERS

- Objects created using a 3D printer could infringe on copyright, patent, and trademark law.
- Have a policy in place to help guide the use of your 3D printer.
- Warning Notice for 3D Printers

http://www.ala.org/offices/sites/ala.org.offices/files/content/3D%20Printer%20Warning%20Notice%20for%20Libraries TLEDITED.pdf

# ANSWERING COPYRIGHT QUESTIONS



### RECOMMENDATIONS

- Be careful to provide information rather than legal advice!
- Have quality resources (print, online) available that you can refer patrons/staff to.
- Have policies in place that dictate the use of library equipment.

### PUTTING IT ALL TOGETHER

### WHY IS THIS ALL IMPORTANT?

- Having a basic knowledge of the law will help you better understand your rights and responsibilities in using protected works
- It is especially important in libraries and academia where we come are constantly having to deal with protected works as part of our regular job duties

### WE'VE GOT IT GOOD

There are many exceptions written into the law which allow us to use protected works for educational purposes

 Your part is to understand your rights and responsibilities under the law

### QUESTIONS?

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