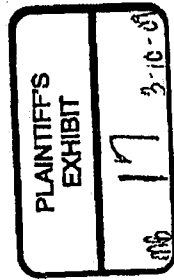


E
X
H
I
B
I
T

17

Copyright in Instruction & the New USG Copyright Policy

Cynthia V. Hall
Office of Legal Affairs
Georgia State University
February 23, 2009



Disclaimer

- Copyright is a large field, and this isn't all there is to it
- Primarily focused on use of copyrighted materials by an instructor and the USG Policy
- Call Legal Affairs with any questions or specific situations – 404-413-0500

What can be copyrighted?

- “Original works of authorship”
- Fixed in a tangible form of expression
- Includes:
 - Literary works
 - Pictorial, graphic, & sculptural works
 - Motion pictures & other audiovisual works
 - Musical works
 - Pantomimes / choreographic works
 - Dramatic works
 - Sound recordings
 - Architectural works
 - Compilations**** of above works

What cannot be protected?

- Not in fixed tangible form of expression
- Titles, names, short phrases, slogans
- Familiar symbols/designs; mere variations in typographic ornamentation, lettering, coloring
- Mere listings of ingredients or contents
- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, devices
- Consisting entirely of information that is common property with no original authorship
- **Works by U.S. government employees**

How does one get copyright?

- No notice needed – Now conferred upon creation/fixation for new works
 - Previously notice was “required”
- But recommend providing notice
 - © Year Author
- Registration at U.S. Copyright Office is not required, but common if intent is commercial

Rights conferred in copyright

- Copyright holder has exclusive rights to:
 - Copy or reproduce
 - Display publicly
 - Adapt (derivative works, translations)
 - Perform publicly
 - Distribute copies to the public
 - Subject to statutory exceptions like fair use
- Authors of visual works have rights of attribution and integrity

Copyright Holder vs. Author

- Copyright holder has exclusive rights to:
 - Copy or reproduce
 - Display publicly
 - Adapt (derivative works, translations)
 - Perform publicly
 - Distribute copies to the public
 - Subject to statutory exceptions like fair use
- Authors of visual works have rights of attribution and integrity

USG Copyright Policy

- “Policy on the Use of Copyrighted Works in Education and Research” – www.usg.edu/copyright
 - Focused on respecting rights of copyright holders and use of copyrighted works in teaching, research, and service
- Compare GSU Intellectual Property Policy
 - Focused on new works created by employees and students

USG Copyright Policy

- Inform & educate students, faculty, & staff on copyright
- Tools to assist in copyright & fair use analysis (see Fair Use checklist)
- Facilitates use of materials currently licensed & provide information on licensing
- Individuals to counsel faculty & staff (Office of Legal Affairs, others)

USG Guidelines on Electronic Reserves

- Instructors evaluate whether permissions needed or fair use – know details of work & use
- Instructors should fill out Fair Use Checklist for each work relying on fair use
- Citation / attribution
- Lawful copy

USG Guidelines on Electronic Reserves (cont.)

- Password restricted with access terminated at the end of the semester
- Remove materials at the end of each semester
- Wherever possible, link or post references rather than scanning material
- No charge for student use

Fair Use

- Copying a work for purposes of criticism, comment, news reporting, teaching, scholarship, or research is not an infringement if determined to be fair use.
- Basis in common law, but now at 17 U.S.C. § 107

Fair Use Factors

- Purpose & character of the use
- Nature of work
- Amount & substantiality of portion used
- Effect of the use upon the potential market
- Fair Use Checklist
 - Based upon one originally compiled by Kenneth Crews, formerly of IUPUI and now at Columbia University

Factor 1: Purpose & character

Factor 1: Purpose and Character of the Use

Weights in Favor of Fair Use

- Nonprofit Educational
 - Teaching (including multiple copies for classroom use)
 - Research or Scholarship
 - Criticism, Comment, News Reporting, or Parody
 - Transformative (use changes work for new utility or purpose)
 - Personal Study
 - Use is necessary to achieve your intended educational purpose
-

Factor Weighs in Favor of Fair Use

Weights Against Fair Use

- Commercial activity
 - Profiting from use
 - Entertainment
 - Non-transformative
 - For publication
 - For public distribution
 - Use exceeds that which is necessary to achieve your intended educational purpose
-

Factor Weighs Against Fair Use

Factor 2: Nature

Weights in Favor of Fair Use

- Published work
 - Factual or nonfiction work
 - Important to educational objectives
-

- Factor Weights in Favor of Fair Use

Weights Against Fair Use

- Unpublished work
 - Highly creative work (art, music, novels, films, plays, poetry, fiction)
 - Consumable work (workbook, test)
-

- Factor Weights Against Fair Use

Factor 3: Amount & substantiality

Factor 3: Amount and Substantiality of Portion Used

Weights in Favor of Fair Use

- Small portion of work used
 - Portion used is not central or significant to entire work as a whole
 - Amount taken is narrowly tailored to educational purpose, such as criticism, comment, research, or subject being taught
-

Factor Weights in Favor of Fair Use

Weights Against Fair Use

- Large portion of entire work used
 - Portion used is central to work or "heart of the work"
 - Amount taken is more than necessary for criticism, comment, research, or subject being taught
-

Factor Weights Against Fair Use

Factor 4: Effect

Weights in Favor of Fair Use

- No significant effect on market or potential market for copyrighted work
- Use stimulates market for original work
- No similar product marketed by the copyright holder
- No longer in print
- Licensing or permission unavailable
- Supplemental classroom reading
- One or few copies made or distributed
- User owns lawfully acquired or purchased copy of original work
- Restricted access (to students or other appropriate group)

Weights Against Fair Use

- Significantly impairs market or potential market for copyrighted work or derivative
- Licensing or permission reasonably available
- Numerous copies made or distributed
- Repeated or long-term use that demonstrably affects the market for the work
- Required classroom reading
- User does not own lawfully acquired or purchased copy of original work
- Unrestricted access on the web or other public forum

Factor Weighs in Favor of Fair Use

Factor Weighs Against Fair Use

Face-to-Face teaching exception

- 17 U.S.C. §110(1)
- “performance or display of a work by instructors or pupils in the course of face-to-face teaching activities...in a classroom... unless, in the case of a motion picture or other audiovisual work... is given by means of a copy that was not lawfully made...”

Distance Education: TEACH Act

- 17 U.S.C. § 110(2)
- Nondramatic literary or musical work or reasonable portions of other works
- But NOT works marketed for online use (digital databases, etc.)
- By instructor as an integral part of mediated instructional activities
- Directly related and of material assistance to the teaching content
- Reception limited to students officially enrolled

Distance Education: TEACH Act

- Institute has policies regarding copyright and provides informational materials to faculty, staff, and students
- Notice to students that materials used may be subject to copyright protection
- Technological measures reasonably prevent retention of the work for longer than the class session AND unauthorized further dissemination
- No circumvention of technological measures

Methodology of Analysis

- Is this a copyrighted work?
 - U.S. government work
 - Public domain (expired copyright)
- Can we make it available with no copying?
 - Links or mere references
- Use within an exception?
 - Fair Use
- Do we have a license for this use?

Copyright Licensing

- If the use does not fall into one of the exceptions, then permission / license is needed to copy, display, perform, etc.
 - Collective rights organizations
- Web linking & referencing without copies
- Georgia State resources:
 - Library holdings (databases in particular) & GALILEO
 - ASCAP & BMI licenses

Copyright Licensing (cont.)

- CreativeCommons.org
 - Provides standard licenses in easy-to-understand terms that more authors are now using
 - Gaining more popularity on the web
 - Caution on 3rd party materials
 - Example:



Copyright Licensing (cont.)

- Copyright Clearance Center (print and online)
- iCopyright (online content)
- Swank / Criterion (for motion pictures)
- Individual contact with studio, author, composer, etc.

Attribution

- Always attribute the author / source of the work
- Even if using without permission (i.e. fair use or another exception)
- Include the author, name of the work, publisher, year, copyright holder

Anticircumvention

- Digital Millennium Copyright Act
- Generally can't go around any type of digital access controls if such access would be "unauthorized"
- Limited exceptions for a few uses, but need to talk to Legal Affairs

Copyright Myths

- I can copy if I give attribution.
- It is legal to copy as long as you don't copy the entirety (more than 25%, 20%, 10%, etc.) of the work.
- Works on the internet are in the public domain and "fair game" for copying.
- If there is no copyright notice, then it is not copyrighted.

Resources

- Association of Research Libraries' Know Your Copy Rights – www.knowyourcopyrights.org
- Columbia University - <http://www.copyright.columbia.edu/>
- University System of Minnesota - <http://www.lib.umn.edu/copyright/fairuse.phtml>

Office of Legal Affairs

- **MUST** notify Legal Affairs if you receive an accusation of infringement, breach of contract, or other legal violation
- **MUST** notify Legal Affairs if you receive a subpoena or legal request for documents related to your research or university work
- **Reviews ALL** contracts involving the University except Research Agreements (OSP) and our own standard forms