

# **EXHIBIT C**

# **Copyright in Instruction & the New USG Copyright Policy**

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# 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

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# USG Copyright Policy

- “Policy on the Use of Copyrighted Works in Education and Research” – [www.usg.edu/copyright](http://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
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*Factor Weighs Against Fair Use*

# Factor 2: Nature

## *Weights in Favor of Fair Use*

- Published work
  - Factual or nonfiction work
  - Important to educational objectives
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- *Factor Weighs 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 Weighs 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

### *Weights Against Fair Use*

- Large portion or 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 Weighs in Favor of Fair Use*

- *Factor Weighs 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)
- 

- Factor Weighs in Favor of Fair Use

## *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 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 3<sup>rd</sup> 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](http://www.knowyourcopyrights.org)
- Columbia University - <http://www.copyright.columbia.edu/>
- University System of Minnesota - <http://www.lib.umn.edu/copyright/fairuse.p.html>

# 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