Florida Atlantic University Libraries

The Internet, Embedding and The Law

A presentation for the 2015 Teaching with Technology Showcase

by

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FAU Jupiter Campus, Room: SR-283, 9:00 – 9:50 a.m., Friday, April 17, 2015
Disclaimer

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Learning Objectives

1. Understand the legal framework governing copyright and fair use – the Copyright Act of 1976, the TEACH act of 2002, the copyright clause of the US Constitution

2. Apply the ‘fair use’ doctrine to determine if sharing a copyrighted work in class is within legal and ethical bounds

3. Recognize how to ethically share print and electronic learning resources in a classroom.

4. Identify a number of learning resources licensed for public and educational purposes on the open web and subscription resources in the library.

5. Distinguish the limitations of using copyrighted works in face-to-face vs. online courses; understanding how the courts and legislative bodies interpret ‘fair use’ and copyright for both teaching formats

6. Know the process for placing learning resources on e-reserve and how to request an exception for showing resources with restrictive copyright licenses to an entire class.
Copyright

Article 1 Section 8 of the U.S. Constitution Addresses the rationale behind copyright. It states: "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."

In U.S. Code, Title 17, Section 102 (a), it states:
"Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device."

A medium of expression is when the creative idea can be perceived by eye or ear, with or without the assistance of some type of machine, i.e.: computer, CD player, DVD player, etc.).
Works Covered

(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; and
(8) architectural works.
When does Copyright Expire?

- It depends. The expiration date changes depending on when, where it was created and if it was registered or renewed.

- United States
  
  [https://copyright.cornell.edu/resources/publicdomain.cfm](https://copyright.cornell.edu/resources/publicdomain.cfm)

- List of other countries' copyright terms
  
<table>
<thead>
<tr>
<th>Type of Work</th>
<th>Copyright Term</th>
<th>What was in the public domain in the U.S. as of 1 January 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unpublished works</td>
<td>Life of the author + 70 years</td>
<td>Works from authors who died before 1945</td>
</tr>
<tr>
<td>Unpublished anonymous and pseudonymous works, and works made for hire (corporate authorship)</td>
<td>120 years from date of creation</td>
<td>Works created before 1995</td>
</tr>
<tr>
<td>Unpublished works when the death date of the author is not known</td>
<td>120 years from date of creation</td>
<td>Works created before 1995</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Date of Publication</th>
<th>Conditions</th>
<th>Copyright Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before 1923</td>
<td>None</td>
<td>None, In the public domain due to copyright expiration</td>
</tr>
<tr>
<td>1923 through 1977</td>
<td>Published without a copyright notice</td>
<td>None, in the public domain due to failure to comply with required formalities</td>
</tr>
<tr>
<td>1978 to 1 March 1989</td>
<td>Published without notice, and without subsequent registration within 5 years</td>
<td>None, in the public domain due to failure to comply with required formalities</td>
</tr>
<tr>
<td>1978 to 1 March 1989</td>
<td>Published without notice, but with subsequent registration within 5 years</td>
<td>70 years after the death of author. If a work of corporate authorship, 95 years from publication or 120 years from creation, whichever expires first</td>
</tr>
<tr>
<td>1923 through 1963</td>
<td>Published with notice but copyright was not renewed</td>
<td>None, In the public domain due to copyright expiration</td>
</tr>
<tr>
<td>1923 through 1963</td>
<td>Published with notice and the copyright was renewed</td>
<td>95 years after publication date</td>
</tr>
</tbody>
</table>

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Fair Use

U.S. Code, Title 17, Section 107 is the doctrine of “fair use”

1) **The purpose and character of the use**, including whether such use is of 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

4) **The effect of the use upon the potential market** for, or value of, the copyrighted work

http://www.copyright.gov/fls/fl102.html
The distinction between what is fair use and what is infringement in a particular case will not always be clear or easily defined. There is no specific number of words, lines, or notes that may safely be taken without permission. Acknowledging the source of the copyrighted material does not substitute for obtaining permission.

http://www.copyright.gov/fls/fl102.html
TEACH Act

- Technology, Education and Copyright Harmonization Act of 2002
- U.S. Code Title 17, Section 110(2)
- (2) is the revised and current law.
- Subset of copyright law.
- Restrictive
- Not required

http://www.copyright.gov/title17/92chap1.html
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TEACH Act

http://blogs.library.duke.edu/scholc
omm/files/2007/12/copyright-
review-flow-chart-v3x.pdf
TEACH Act

- “For example, as indicated above, an educator may show or perform any work related to the curriculum, regardless of the medium, face-to-face in the classroom - still images, music of every kind, even movies. There are no limits and no permission required. Under 110(2), however, even as revised and expanded, the same educator would have to pare down some of those materials to show them to distant students or make them available over the Internet to face-to-face students. The audiovisual works and dramatic musical works may only be shown as clips -- "reasonable and limited portions," the Act says. “

- “…for example, where 110(2) authorizes the use of movie clips and the available DVDs don't permit ripping (a prerequisite to creating a digital "clip"), you can digitize those parts using an analog tape; but you are not authorized by the TEACH Act to digitize the whole movie. Fair use is almost always going to be the best source of authority for making copies”

http://copyright.lib.utexas.edu/teachact.html#110%282%29
Why Should I care?

The legal penalties for copyright infringement are:
Infringer pays the actual dollar amount of damages and profits.
The law provides a range from $200 to $150,000 for each work infringed.
Infringer pays for all attorneys fees and court costs.
The Court can issue an injunction to stop the infringing acts.
The Court can impound the illegal works.
The infringer can go to jail.

Cambridge Press v. Georgia State University (2014)
Filed in 2008, in 2012, according to Tom Allen, president and CEO of American Association of Publishers, the costs were “several million” so far.

Images

Current Fair Use image copyright laws say that you’re financially liable for posting copyrighted images, even if:

• You did it by accident
• You immediately take down the picture after receiving a DMCA takedown notice
• The picture is resized
• If the picture is licensed to your Web developer (Getty Images requires that you get your own license, thank you very much)
• You link back to the photo source and cite the photographer’s name
• Your site isn’t commercial and you make no money from your blogs
• You have a disclaimer on the site
• The pic is embedded instead of saved on your server
• You found it on the Internet

http://www.prdaily.com/Main/Articles/How_using_Google_Images_can_cost_you_8000_14912.aspx
What you Can do

http://www.knowyourcopyrights.org
Classroom Use

- The guidelines permit a teacher to make one copy of any of the following: a chapter from a book; an article from a periodical or newspaper; a short story, short essay, or short poem; a chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper.

- Teachers may photocopy articles to hand out in class, but the guidelines impose restrictions. Classroom copying cannot be used to replace texts or workbooks used in the classroom. Pupils cannot be charged more than the actual cost of photocopying. The number of copies cannot exceed more than one copy per pupil. And a notice of copyright must be affixed to each copy.

- Examples of what can be copied and distributed in class include:
  - a complete poem if less than 250 words or an excerpt of not more than 250 words from a longer poem
  - a complete article, story, or essay if less than 2,500 words or an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less; or
  - one chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue.

http://fairuse.stanford.edu/overview/academic-and-educational-permissions/non-coursepack/
Linking

- Embed the link, not the item.
- If each student retrieves the item it is fair use.
- If the faculty member embeds the item, copies the items for distributing (individual or course packs or emails the item to the students, it would be considered infringement)
### Know Your Copy Rights

**Often you can use works in your teaching without permission or fee.**

This chart highlights some of those situations. However, there are other circumstances where permission and/or fees are required (for example, when some types of works are included in course packs). Check with your institution's library or legal office for information about campus copyright policies.

#### What You Can Do

<table>
<thead>
<tr>
<th>Legal Status of Work To Be Used</th>
<th>Proposed Use</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Exhibit materials in a live classroom?</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>----------------------------------------</td>
</tr>
<tr>
<td>Public Domain Works (US Govt and pre 1923 works, and certain other works)</td>
<td>Yes</td>
</tr>
<tr>
<td>Words Not Protected by Copyright</td>
<td></td>
</tr>
<tr>
<td>Your Own Works (if you hold copyright or retained use rights)</td>
<td>Yes</td>
</tr>
<tr>
<td>Open Access Works (works published online without license, payment, or terms and conditions)</td>
<td>Yes</td>
</tr>
<tr>
<td>Electronic Works Licensed by Your Institution (depends on license, but usually permitted)</td>
<td>Yes</td>
</tr>
<tr>
<td>Electronic Works with a Creative Commons License (depends on license, but usually permitted; if yes, Link)</td>
<td>Yes</td>
</tr>
<tr>
<td>Other Works (when none of above apply)</td>
<td>Yes</td>
</tr>
</tbody>
</table>

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Permissions

- Pre 1923 materials
- Explicit disclaimer
- Government publications
- Transformed materials
- Your own creations
- Written Permission
- Pay for permission
- Open Access
Course Building

- Course Catalog
- Syllabus
- Rubrics
- Content
- Posting
- Course delivery
  - F2F
  - Online
  - Hybrid
- Computer
- Internet
- Born digital
- Text
- Examples
- Graphics
- Media
- Mobile devices
- Copy & Paste
- Drag & Drop
Delivery Method

- F2F
- Online
- Hybrid
- MOOC

What you can do depends on how the information is used and how it will be distributed.
About the Rights Statement

Participating institutions may have various reasons for determining that "no known copyright restrictions" exist, such as:

1. The copyright is in the public domain because it has expired;
2. The copyright was injected into the public domain for other reasons, such as failure to adhere to required formalities or conditions;
3. The institution owns the copyright but is not interested in exercising control; or
4. The institution has legal rights sufficient to authorize others to use the work without restrictions.

Copyrights on Photographs

Under "The Commons," cultural institutions that have reasonably concluded that a photograph is free of copyright restrictions are invited to share such photograph under their new usage guideline called "no known copyright restrictions."

Photographs can be difficult to analyze under copyright law, not only because laws around the world differ with respect to scope and duration of protection, but because the photographs themselves often lack credit lines, dates and other identifying information. Libraries, museums and other cultural institutions have a great deal of experience with photographs because they frequently collect, preserve, document and study them in accordance with their nonprofit missions. However, in many instances, a cultural institution will not be the rights holder under copyright law. Therefore, it can neither grant permission to others who wish to use a photograph nor provide a guarantee that the photograph is in the public domain.

BY ASSERTING "NO KNOWN COPYRIGHT RESTRICTIONS," PARTICIPATING INSTITUTIONS ARE SHARING THE BENEFIT OF THEIR RESEARCH WITHOUT PROVIDING AN EXPRESSED OR IMPLIED WARRANTY TO OTHERS WHO WOULD LIKE TO USE OR REPRODUCE THE PHOTOGRAPH. IF YOU MAKE USE OF A PHOTO FROM THE COMMONS, YOU ARE REMINDED TO CONDUCT AN INDEPENDENT ANALYSIS OF APPLICABLE LAW BEFORE PROCEEDING WITH A PARTICULAR NEW USE.

TO REVIEW THE EXPLICIT RIGHTS STATEMENT FOR ANY IMAGE, PLEASE CLICK ON THE RELEVANT LINK UNDER "PARTICIPATING INSTITUTIONS," OR ON THE "NO KNOWN COPYRIGHT RESTRICTIONS" LINK ASSOCIATED WITH THE IMAGE IN THE COMMONS.
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http://creativecommons.org/
http://creativecommons.org/
About CC0 — “No Rights Reserved”

CC0 enables scientists, educators, artists and other creators and owners of copyright- or database-protected content to waive those interests in their works and thereby place them as completely as possible in the public domain, so that others may freely build upon, enhance and reuse the works for any purposes without restriction under copyright or database law.
Google Images

Usage rights:
- Not filtered by license
- Labeled for reuse with modification
- Labeled for reuse
- Labeled for noncommercial reuse with modification
- Labeled for noncommercial reuse

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YouTube

Learn more about copyright on YouTube

Looking to learn even more about copyright? These resources will get you started, whether you're just seeking general knowledge, or a more in-depth understanding of topics like fair use.

What is Copyright?
What is protected by copyright? How is copyright different from other forms of intellectual property?

What is fair use?
There are certain circumstances under which the law allows use of excerpts from copyrighted material.

Creative Commons
Learn about a special type of license that allows content to be re-used — if you follow the rules.

Frequently Asked Questions
Answers to the copyright questions we're asked most often.
Embedding Library Resources

http://libguides.fau.edu/content.php?pid=149928&sid=3544449

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E-Reserves

- The University libraries also have an eReserves unit which can locate copyright holders, obtain copyright permissions for you, post materials for access by your students, insure the legality of the work you would like to use and if costs are excessive, make recommendations for you on other options.

- Access is available through the library’s website under services / Faculty Reserve Information. http://www.library.fau.edu/depts/access/resfac.htm

- Some of the best practices that are shared with faculty include the following guidelines from http://www.library.fau.edu/depts/access/resfac.htm
Supplemental Information

- Copyright Best Practices (FAU CeL)
  [http://www.fau.edu/cel/faculty/bestpractices-copyright-ada.php](http://www.fau.edu/cel/faculty/bestpractices-copyright-ada.php)
- Is the item under copyright?
  [http://www.ala.org/advocacy/copyright-tools#mod](http://www.ala.org/advocacy/copyright-tools#mod)
- Teach Act Toolkit
  [http://www.provost.ncsu.edu/copyright/toolkit/](http://www.provost.ncsu.edu/copyright/toolkit/)
- Copyright Crash Course
  [http://copyright.lib.utexas.edu/l-intro.html](http://copyright.lib.utexas.edu/l-intro.html)
- Avoid Copyright Infringement
  [http://www.wikihow.com/Avoid-Copyright-Infringement](http://www.wikihow.com/Avoid-Copyright-Infringement)
- Code of Best Practices in the Fair Use for Visual Arts
- The CampusGuide to Copyright Compliance for Academic Insytitutions
Thank You!

The Internet, Embedding and The Law
Questions