

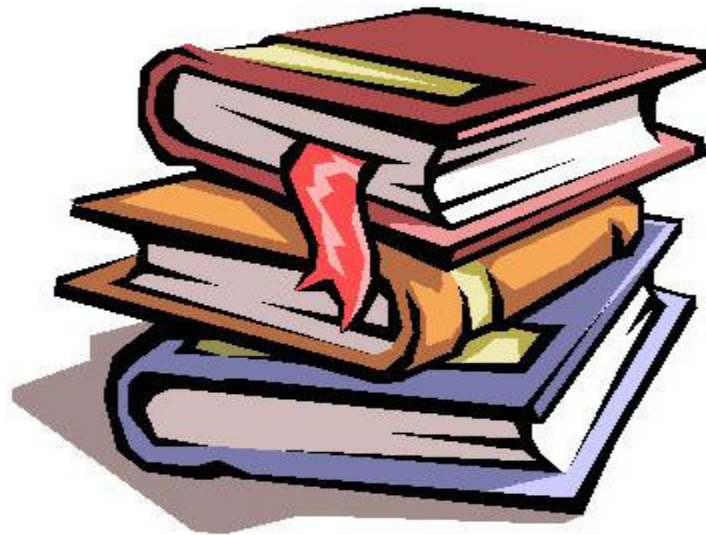


# Basic Copyright Law for Educators

Christopher W. Hine  
Presenter

# What is a Copyright ?

- Copyright is a form of protection provided by the laws of the United States (title 17, U.S.Code) to the authors of “original works of authorship,” including literary, dramatic, musical, artistic, and certain other intellectual works.



# What is the Purpose of Copyright Law?

- A copyright encourages individuals to create original works by preserving a limited right to profit from their sale.
- A copyright also allows the greater public to benefit from the widespread dissemination of creative works.



# What does a Copyright Protect ?

- Protects limited ways of expressing ideas, once the expressions are **fixed in a tangible medium of expression**.
- A copyright does not protect the **facts** included in a work or the **ideas, processes, or systems** that may be described in a work.
- Anyone can use facts and ideas in a work at any time (unless they are protected by some other law).

# How Long does a Copyright Last ?



- Begins at the moment that a work is fixed in a tangible medium.
- Works published after 1978 are protected during the author's lifetime, *plus* 70 years.
- “Works for hire” are protected for the shorter of 120 years after creation, or 95 years after publication.
- Works published, with the proper copyright notice, between 1923 and 1978 are protected for 95 years.
- Unpublished works created before 1978 are protected for the of the life of the author plus 70 years

# Rights of Copyright Holders

- To do and to authorize a set of uses including the ability to :
  - make copies
  - create derivative works
  - distribute works
  - display and perform works publicly
  - give others permission to exercise the copyright holder's rights



# Possible Infringement Situations

- Making and distributing copies of course-related educational materials
- Displaying and performing works
- Digitizing our archival holdings
- Including others' works in Web pages
- Student projects
- Institutional development or recruiting materials
- Peer-to-peer file sharing

# Limits on Copyright Rights

- Fair use
- Libraries can archive works, to make copies for patrons and to participate in interlibrary loan operations, to make preservation copies
- Copy and distribute works that are not commercially available
- The “first sale” doctrine allows an owner to lend, give away or sell copies of a work
- Certain educational performances and displays in face-to-face teaching, web-enhanced face-to-face teaching and in distance learning
- Making adapted copies for the blind and visually impaired



# Purpose of Rights and Limits

The rights and limits attempt to balance the incentive to create with the need for public access to increase knowledge and promote progress.



# Fair Use- *four factors*

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

# What is the character of the use?

- Nonprofit
- Educational
- Personal
- Restricted access
- One of the listed uses
  - News reporting
  - Commentary
  - Criticism
  - Teaching
  - Research
- Otherwise "transformative" use



Commercial and for profit uses are less likely to be “fair use”

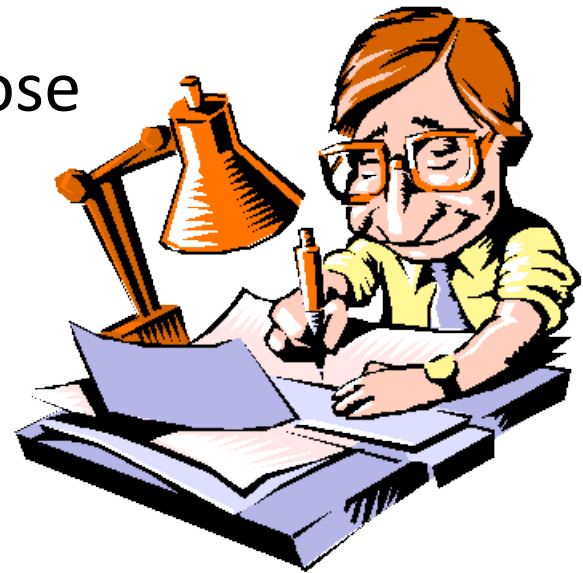
# What is the nature of the work to be used?

- Fair Use
  - Fact
  - Published
- Neutral
  - A mixture of fact and imaginative work
- Requires Permission
  - Imaginative
  - Unpublished



# How much of the work will you use?

- Fair use
  - Small amount
  - Not the heart of the work
  - Appropriate in light of purpose
- Request Permission
  - More than a small amount
  - Heart of the work



# Effect of widespread use on the market for the original or for permissions

## Fair Use

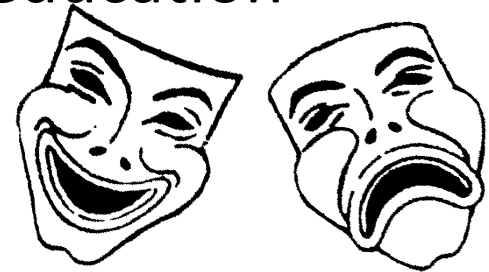
- Owning a copy
- Few copies made
- Evaluation of the first three factors indicates fair use
- Original is out of print or otherwise unavailable
- No ready market for permission
- Copyright holder is unidentifiable

## Request Permission

- Competes with (takes away sales from) the original
- Avoids payment for permission (royalties) in an established permissions market
- Many copies made
- Wide distribution
- Repeated use

# Performance Rights

- TEACH Act provides rights for educators to
  - Display other's works *in the classroom*
  - Perform other's works *in the classroom*
  - to make the copies integral to such performances and displays for digital distance education
- Difference between
  - Classroom- few limits
  - On-line- “reasonable and limited portions”



# Liability for Infringement

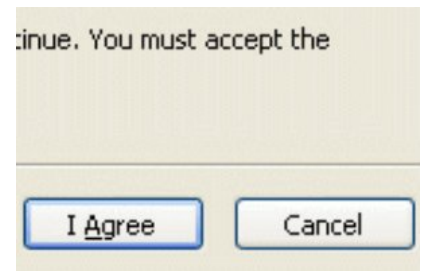
- Strict Liability- Ignorance is no excuse
- Personal liability
  - Willful- Up to \$150k per act
  - Non-Willful- \$750 to \$30k per act
- Parties who May be Liable
  - Employee
  - KCCD
    - Agency - for employee or agent
    - Vicarious Liability- for independent contractor
    - Contributory- for students or organizations
- However, The Eleventh Amendment of the US Constitution prevents plaintiffs from seeking monetary damages from state institutions in copyright cases





# Contractual Liability

- The District, and/or its employees, may still be liable for infringement of materials purchased or contracted for by the employee or the district
- Potential liability will depend on the terms and conditions of the licensing agreement



# Copyrighted Works by Employees

- The copyright initially belongs to the author however the following factors may determine final ownership:
  - Whether more than one person or entity qualifies as an author;
  - Whether the *work made for hire doctrine applies*, making an employer the author of the creator's work;
  - Whether an institutional policy affects who holds copyright; or
  - Whether any *signed contracts* affect who hold copyright.



# Copyright provisions from CCA CBA

- 3.C. 1. Copyrights to Works created by a faculty member using *Nominal District Resources* will be owned by the faculty member
- 3.C.2. Copyrights to Works created by a faculty member using *Substantial District Resources* shall be the property of the District.
- 3.C.3. Copyrights and patents developed from projects undertaken by a faculty member at the request of the District using *Substantial District Resources*, including reassigned time of the faculty member, shall belong to the District and/or faculty member together with all royalties or profits, as provided in the Intellectual Property Rights Agreement Form to be concluded before the project is begun.
- 3.C.4. The District may transmit or record for transmission any classroom instruction, lecture, or other instructional or performance event produced by a faculty member as part of a *distance learning program*. The District, however, may not sell or re-transmit in future semesters any such recording except under the terms of the Intellectual Property Rights Agreement Form between the District and faculty member
- Any of the above may be modified by a *Intellectual Property Rights Agreement Form* between the District and faculty member



# Non-Faculty Copyright

- Employers will hold the work of their employees *within the scope of employment* under the definition of a work made for hire.
- Under agency principles, work is considered *within the scope of employment* if
  - it is done mostly at work
  - during work hours
  - using the employer's facilities and equipment
  - with at least a partial purpose of serving the employer's needs.

This presentation included information from,  
and was based on, the following:

**COPYRIGHT LAW: A CRASH COURSE FOR LAWYERS  
NEW TO HIGHER EDUCATION**

Updated and maintained by

**Jack Bernard**

Associate General Counsel

The University of Michigan Ann Arbor, Michigan

Originally Prepared and Presented by:

**Georgia Harper** University of Texas System, Austin,  
Texas June 2006

Their contribution is gratefully acknowledged

# IMPORTANT

The information presented at this training is of a general nature and not intended to be relied upon as legal advice. You should obtain specific advice from the General Counsel's office before taking, or refraining from taking, any significant action .