

Fair Use, Permissions &
Copyright Infringement in the
Digital Age: A copyright primer
for faculty using Blackboard

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Copyright Basics

- Copyright protects original works of authorship fixed in a tangible medium of expression
- Copyright protects the expression of an idea, not the idea itself
- Facts are generally not copyrightable
- © symbol not required, copyright begins at moment fixed in tangible medium
- It's not free just because it's online
- Not everything is copyrighted-government documents, public domain

So What If It's Copyrighted?

- Copyright owners have **exclusive** rights to make copies, create derivative works, distribute, display and perform works publicly
- If you want to use a protected work, you either need permission or coverage under one of the law's exemptions such as fair use

Fair Use: The Main Exemption

- Fair use exemption created by section 107 of the Copyright Law
- Fair use is analyzed using four factors:
 - Character of the Use
 - Nature of the material to be copied
 - Amount and importance of the part copied
 - Effect on market for permissions

Some Comments on Fair Use

- Factors are interactive
- Educational, nonprofit use does not create a blanket fair use exemption
- Commercial use is much more likely to require permission
- Imaginative, unpublished work is more likely to require permission than factual, published work
- Using less is better than using more
- An active permissions market is more likely to require permission

Other Exemptions

- Section 108 creates some copying exemptions for libraries and archives
- Section 110(1) creates a blanket exemption for display/performance of a work in face to face teaching
- Section 110(2) creates a more limited exemption for transmission and display of still images for classroom instruction; no exemption for audiovisual transmissions or dramatic works

Blackboard Issues

- Small portions
- Limited access
- Limited duration-terminate access for students at end of the term
- Only incorporate materials from legal copies
- Link to, rather than copy, sources when possible
- Beware licensing issues for Library online resources

Permissions

- Sometimes there is no other choice
- Follett provides free clearance services for course packs
- There is no foolproof mechanism
- Call OGC, Libraries, Follett
- Copyright Clearance Center
<http://www.copyright.com/>

A Word about Trademarks

- Trademarks identify the source of a good or service
- No fair use equivalent
- Be cautious in using trademarks as hypertext links or otherwise
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Tentative Conclusions

- There are few black and white answers and each use requires its own analysis
- Sometimes permission will be necessary
- We are all both consumers and producers of copyrighted material

Additional Resources

- U.S. Copyright Office
<http://lcweb.loc.gov/copyright/>
- Marquette Library IP Links page
<http://www.marquette.edu/library/sites/patents.html>
- UT Crash Course in Copyright
<http://www.utsystem.edu/OGC/IntellectualProperty/cprtindx.htm>
- Stanford University Library Fair Use Page
<http://fairuse.stanford.edu/>