Copyright & Copywrongs

Digital Media in the Classroom

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30 September 2005
Some History

- 1978 – Commission on New Technological Uses of Copyright Works (CONTU) adopts guidelines for photocopying
- 1992 – Consortium of College and University Media Centers (CUMC) convenes a multimedia working group
- 1994 – Conference on Fair Use (CONFU) convenes; CCUMC working group becomes the CONFU multimedia working group
- 1995 – CONFU working group on Electronic Reserves fails
- 1996 – CONFU subgroup on E-Reserves adopts guidelines without support from most publishers
Defining “Fair Use”

- A provision in most copyright conventions or statutes that makes it possible for individuals to copy portions of a document or other piece of work for short-term use in criticism, comment, news reporting, teaching, scholarship, and research. [www.webliminal.com/search/glossary.htm](http://www.webliminal.com/search/glossary.htm)

- The legal guidelines which exempt educators from certain copyright restrictions. Fair use of educational materials allows some media products to be used to a limited degree in the classroom. Individual school districts interpret Fair Use policy differently. [www.pbs.org/weta/myjourneyhome/teachers/glossary.html](http://www.pbs.org/weta/myjourneyhome/teachers/glossary.html)
There are four factors set forth in 17 USC § 107 (the U.S. Copyright Act) to be considered in determining whether or not a particular use is fair:

(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; and
(4) the effect of use upon potential market

[www.library.yale.edu/~llicense/definiti.shtml](http://www.library.yale.edu/~llicense/definiti.shtml)
Weighing “Fair Use”

Purpose and Character of Use

Favors Fair Use

Nonprofit Teaching Scholarship Personal

Criticism Commentary Parody Restricted Access News Report

Commercial Entertainment Profit Lack of Attribution

Does Not Favor Fair Use

?
Weighing “Fair Use”

Nature of Copyrighted Work

- **Factual**
  - Published
  - Favors Fair Use

- **Mix of Fact and Imagination**
  - Unpublished
  - Does Not Favor Fair Use

- **Creative Entertainment Consumable**
  - (workbooks, etc.)
  - ?
Weighing “Fair Use”

Amount to be used

Favors Fair Use

• Small Portion of Work
  • Portion Not Central to Entire Work
  • Appropriate to Educational Use

Does Not Favor Fair Use

• Substantial Portion of Work
  • Central to Entire Work
  • Whole Work
  • More than Appropriate For Educational Use
Weighing “Fair Use”

Effect on Market

Favors Fair Use

- No Significant Effect on Current or Potential Market
- No Similar Product Marketed by Owner
- Copyright Holder Unidentifiable
- User Owns a Lawfully Acquired Copy of Original

Does Not Favor Fair Use

- Replaces Sale of Work
- Significantly Impairs Current or Potential Market
- Numerous Copies Made
- Publicly Accessible On the Web
- Repeated or Long-term Use

Favors Fair Use
The TEACH Act modifies 17 USC § 110 (2), allowing transmissions of performances and displays of copyrighted works. Any time a performance or display is transmitted, TEACH comes into play. This includes:

- Traditional courses with an online component
- ITV courses
- “Distance education courses”
- Use of a course management system (e.g., WebCT, D2L)
TEACH “Fair Use”

- Performance of a Non-Dramatic Literary Work
- Performance of a Non-Dramatic Musical Work
- Reasonable or Limited Portions of Any Other Work

- Directly Related and of Material Assistance to the Teaching Content
  - An Integral Part of a Class Session

Favors Fair Use  Does Not Favor Fair Use
TEACH “Fair Use”

- Textbook, Coursepak, or Other Material in Any Media that is Typically Purchased for Independent Use and Retention
- Commercially Available Educational Materials
TEACH “Fair Use”

Converting Analog to Digital

- Amount of Work Digitized is No Greater than the Amount that can Lawfully be Used for the Course
- There is No Digital Version Available
- Digital Version has Technological Protections that Prevents Lawful Use

Favors Fair Use  Does Not Favor Fair Use
But...

“Fair Use” cannot and should not be defined clearly because “the doctrine is an equitable rule of reason, no generally applicable definition is possible, and each case raising the question must be decided on its own merits.”


“Fair Use” Guidelines ARE NOT Law
Copyright Decision Map

Is the work protected by copyright?

Is the work in the Public Domain?

Is the work eligible for copyright?

Is the work already available under license?

Does Library have licensed copy?

Is there a Creative Commons license?

Is intended use Fair Use?

Purpose/character of use

Nature of work

Amount/persistance of use

Effect on potential market
Copyright Decision Map

If no fair use or license, seek permission

Identify copyright owner and obtain permission

If no permission, consider alternatives

Adjust/change use

Use different work

Buy copies as needed

Seek legal advice
Scenario 1

As an alternative to class photocopies, an instructor scans a couple journal articles and a chapter from a book and places them on the school’s server. The teacher tells the students how to access them so that they may complete the class assignment.

Copyright or Copywrong?
Scenario 2

A student creates a Web site for a school project using various text files, video clips and audio files that are protected by copyright and used without permission but are owned by the student’s library.

Copyright or Copywrong?
Scenario 3

An instructor plays clips from several videotapes and audio disks in class. The clips have been lawfully obtained and may be used in face-to-face teaching. The instructor would like to reproduce the short clips into a collection on CD-ROM or DVD to keep them organized and in a single medium.

Copyright or Copywrong?
A teacher uses several motion pictures and song recordings in a survey course on popular culture. The teacher would like to use streaming media to allow students access outside of class.

Copyright or Copywrong?
In closing…

“Copyright was a policy balancing innovation between incentive and public domain… Now it seems to be locked in a debate about property.”

--Tracy Mitrano
Cornell University – Computer Policy and Law Program
Sources

- SUNY Albany: Intellectual Property, Copyright and Fair Use Resources
  - http://www.albany.edu/~ls973/copy.html
- Stanford University Libraries: Copyright & Fair Use
- NCSU: The TEACH Toolkit
  - http://www.lib.ncsu.edu/scc/legislative/teachkit/
- Public Knowledge: Issues
  - http://www.publicknowledge.org/issues
- MnSCU Intellectual Property and Copyright
  - http://www.intellectualproperty.mns cu.edu/
- IUPUI Copyright Management Center: Fair-Use Issues
  - http://www.copyright.iupui.edu/fairuse.htm
- University of Minnesota Copyright Information & Education Initiative
  - http://www.lib.umn.edu/copyright/
- Siva Vaidyanathan, SIVACRACY.NET
  - http://www.nyu.edu/classes/siva/