Copyright Basics
In Higher Education

October 29, 2010

Kelly Capen Douglas
General Counsel

Steve Staninger
Professor and Associate University Librarian
Copley Library
Overview

- What is a copyright?
- What does copyright protect?
- When is permission required?
- Statutory exceptions to copyright laws
- Fair Use
What is a Copyright?

• A copyright is a set of exclusive legal rights that authors have over their work for a limited period of time

• Article I, Section 8 of the United States Constitution:

“The Congress shall have the Power 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…”
Copyright Requirements

• Originality
  ✓ Not copied
  ✓ Only a minimal degree of creativity is required

• Work of Authorship
  ✓ Includes literary, musical, dramatic, choreographic, pictorial, graphic, sculptural, audiovisual, and architectural works, and sound recordings.

• Fixed in a tangible medium of expression
  ✓ Must be reduced to paper, the computer screen, a piece of canvas, etc.
  ✓ Ideas simply in the author’s head do not count
• Copyright does not protect facts or ideas – only the expression of those facts and ideas

• Notice and registration are not required
  ✓ Although they can provide some advantages

• Publication is not required
When Does Copyright Begin and End?

• Copyright attaches *automatically* upon creation

• As a general rule:
  ✓ Works published in the U.S. before 1923 are in the public domain
  ✓ Works published in the U.S. between 1923 and 1978 are protected for 95 years from the publication date
  ✓ Works published during or after 1978, works are protected for the life of the author plus 70 years.
Owner’s Exclusive Rights

• Make copies (in whole or in part)
• Make derivative works (e.g. translations, musical arrangements, second editions)
• Distribute copies to the public by sale, gift, rental, loan, or other transfer
• Public performance or public display of the work
• Authorizing others to do the same
Permissions and Transfers

- The exclusive rights are independent of one another
- License: permission to exercise one or more of the exclusive rights in specified ways
- Transfer: assignment of ownership of one or more of the exclusive rights
- Transfers and exclusive licenses must be in writing and signed by the owner
When is Permission Required?

Unless an exception to the copyright owner’s exclusive rights applies, you must obtain permission from the copyright owner to copy, distribute, display or perform a copyrighted work in any medium for any purpose.
Permissions

- Each faculty member is responsible for obtaining or arranging to obtain copyright permissions when permission is required to use the work
  - ✓ Coursepacks (hard copy)
  - ✓ Electronic coursepacks (Web CT, Blackboard, etc.)
  - ✓ Electronic reserves
  - ✓ Other materials
• Written permissions should include:
  ✓ Title, author and/or editor
  ✓ Exact material to be used
  ✓ Number of copies to be made
  ✓ Intended use of the material (e.g. educational)
  ✓ Form of distribution (e.g. hard copies to the class, posted on internet with password protection, etc.)
  ✓ Whether the material will be sold (e.g. as part of a coursepack)
It’s Not Infringement If...

- You are the copyright owner
- You have permission
- The work you are using is in the public domain
- A specific statutory exception applies
- The use is “fair use”
Section 110(1) of the Copyright Act
• Performance or display of a work
• By instructors or students
• During face-to-face teaching activities
• Of a non-profit educational institution
• The copy must have been lawfully made
• NOTE: This exception does not permit copying or distributing a work
• “Displaying” the work is permitted – e.g. showing a copy of it directly or by means of a projection or similar system
• “Performing” the work is permitted – e.g. showing a film or video, playing music, reciting a poem, acting out a play, etc.
Distance Education- TEACH Act

- Technology, Education and Copyright Harmonization Act
- Signed into law November 2, 2002
- Amends Section 110(2) of the Copyright Act
- Facilitates the use of copyrighted materials, without permission, in distance education (transmissions over digital networks)
Distance Education- TEACH Act (cont’d)

- Limited to accredited nonprofit educational institutions
- Some of the TEACH Act requirements:
  - Non-dramatic literary and musical works may be performed
  - Other works may be performed only in “reasonable and limited portions”
  - The display of any work is limited to “an amount comparable to that which is typically displayed in the course of a live classroom session.”
  - Copy must be lawfully made and acquired
• Performance or display must be:
  ✓ “made be, at the direction of, or under the actual supervision of the instructor”
  ✓ “an integral part of a class session offered as a regular part of the systematic mediated instructional activities” of the institution
  ✓ “directly related and of material assistance to the teaching content of the transmission.”

• Use must be for live or asynchronous class sessions
• Technological Requirements
• Not all educational use is fair use!
• Four Factors:
  ✓ Purpose and character of the use
  ✓ Nature of the copyrighted work to be used
  ✓ Amount and substantiality of the portion used in relation to the entire work
  ✓ Impact of the use on the potential market for or value of the work
• Case-by-case balancing required
Fair Use (cont’d)

• Industry/Higher Education Negotiated Guidelines regarding:
  - Single copies for use in teaching and research
  - Multiple Copies for Classroom Distribution and Use

• These guidelines represent the minimum of what is permissible - and not the outer limits of fair use
• These guidelines do not cover coursepacks (hard copy or electronic)
Electronic Reserves

• Provides on-line access to material already owned by or licensed to the library
• Often the material already is in electronic format
• The library applies the statutory exceptions and fair use
• Other rules that apply to electronic reserve materials:
  ✓ Faculty-provided material must be an original copy (not a reproduction)
  ✓ Electronic reserve materials are available only to students in the class for which the materials are assigned
  ✓ Faculty must provide their students with passwords to access the electronic reserve material
  ✓ Electronic reserve materials are available only during the time the course is in session
Media Guidelines

• Fair use and other statutory exceptions apply
• Portion Limitations
  ✓ Up to 10% or 3 minutes (whichever is less) of a copyrighted motion media work may be reproduced and/or incorporated into a multimedia project
  ✓ Up to 10%, but no more than 30 seconds, of music or lyrics
  ✓ Up to 10%, or 2500 fields or cell entries, from a copyrighted database or data table
  ✓ No more than 5 images by a single artist or photographer.
A Crash Course in Copyright: http://www.utsystem.edu/OGC/IntellectualProperty/cprtindx.htm
Stanford University Libraries’ Fair Use Site: http://fairuse.stanford.edu
Copyright Management Center: http://www.copyright.iupui.edu
Copyright Information and Education (University of Minnesota): http://www.lib.umn.edu/copyright/
The United States Copyright Office: http://lcweb.loc.gov:80/copyright/
Copyright Clearance Center: http://www.copyright.com
Copyright Basics

Thank You!

October 29, 2010