

Copyright in Higher Education

James Grimmelmann

November 18, 2015

Today

- Copyright basics
- Course materials
- Research and publication
- Running theme: licenses matter

Survey

- Do you own any copyrights?
- Do you use any copyrighted work of others?
- Have you infringed any copyrights today?

Copyright's *Ambit*

When copyright matters

- Are you looking at using the kind of thing that is protected by copyright?
- And do you want to do something with it that implicates the rights copyright gives owners?

What's copyrightable?

17 U.S.C. § 102(a)

- Copyright applies to “original works of authorship”
 - Books, articles, stories, movies, songs, plays, photographs, paintings, sculptures, powerpoints, blueprints, etc.
- Copyright attaches immediately on “fixation”
 - Registration and notice are not required

Who owns it?

- Initially the creator (author, composer, etc.)
 - Unless they're an employee on the job
 - Unless there's an express signed agreement for “a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas”
- Very often assigned by contract (e.g. publisher)

Who owns it? (UMB specifics)

UNIVERSITY SYSTEM OF MARYLAND POLICY ON INTELLECTUAL PROPERTY

“Personnel and Students shall have all rights in copyrights of their work ... with the following exceptions.”

“The University shall have the right to use and reproduce for research and educational purposes scholarly and original works ... for which it has provided resources.”

Length of copyright

- New works: life of the author plus 70 years
 - Corporate works: 95 years from publication
- Pre-1976 works: consult an expert
 - Life + 70 is a safe assumption when in doubt
 - 1923 is the cutoff year for “published” U.S. works
 - Beware of foreign, non-English, and unpublished works, as well as pre-1972 sound recordings

Exclusive rights

17 U.S.C. § 106

- Reproduce (make copies)
- Distribute (sell, rent, lend copies)
- Perform publicly
- Display publicly
- Prepare derivative works (translate, adapt, &c.)

Academic Uses

It's okay if ...

- It's not under copyright in the first place
- You're not triggering copyright (linking, etc.)
- The owner says it's okay (licenses, CC, etc.)
- The Copyright Act says it's okay (classroom performances, TEACH Act, first sale, etc.)
- Fair use "says" it's okay

The public domain

- Published in the U.S. before 1923
- Federal government works
 - E.g. NASA imagery
 - E.g. Bureau of Labor Statistics surveys
 - E.g. Congressional investigative reports

Linking: almost always okay

- Doesn't trigger the owner's exclusive rights:
 - You're not making copies of anything
 - You're not distributing copies of anything
- But don't link to obvious infringement
 - Link to baltimoresun.com: okay
 - Link to piratefilez.sk: probably not okay

First sale: almost always okay

- The *owner* of a *lawfully made* copy may sell, rent, lend, etc.
- Libraries rely on first sale all the time
- So do physical reserves
- But electronic distribution also involves copying—so you can't rely on first sale

Licensed versions

- UMB has licenses for online journals and databases
 - Those licenses cover your and your students' access
 - Librarians can help
- Open-access resources, including many peer-reviewed journals, are also freely available

Classroom exemption

17 U.S.C. § 110(1)

- Non-profit, in-classroom, face-to-face
 - *NOT online*
- Display or performance
 - *NOT handing out copies*
- Of legitimately obtained materials

Be careful of contracts and licenses

- E.g., a library database has old public-domain articles
 - So downloading a PDF to upload to Blackboard won't be copyright infringement
 - But if the library license agreement authorizes only personal use by individuals, this violates the license
- E.g., iTunes downloads are “only for personal, noncommercial use”

Fair use

17 U.S.C. § 107

“... the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.”

Discussion