

# Copyright for Online Teaching

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# Copyright Law in a Nutshell

## Copyright Act of 1976, 17 U.S.C. § 101 et seq.

- Protects original works that are fixed in any tangible medium of expression (e.g. books, articles, music, movies, software).
- Author/Creator holds several exclusive rights, including the right to copy and disseminate, to create derivative works, and to publicly display.
- Since 1989 - no requirement of publication, registration or inclusion of the © symbol.
- Copyright Duration – see Cornell Public Domain Chart (<http://copyright.cornell.edu/resources/publicdomain.cfm>)



*America in a Nutshell* by Vermario  
(Flickr.com CC-BY-NC-SA)

## Copyright: Exceptions for Teaching

- Face to Face Teaching (§ 110(1))
  - Allows performance or display, without permission, of copyrighted works during face-to-face instruction.
  - This exception does not provide for copying or distribution of copyrighted works.
- TEACH Act (§ 110(2))
  - Allows digital display and performance of copyrighted works without permission under very limited circumstances.
  - TEACH Act does not apply to MOOCs
- Fair Use (§ 107)
  - Permits use and reproduction of copyrighted works where purpose of such use is criticism, comment, news reporting, scholarship, research, or education **and** where the balance of four separate factors weighs in favor of such use
  - Fair Use applies to distance learning – but much more limited application to MOOCs

## TEACH Act: What it Allows

- Applies to performances and displays (not digital delivery of reading materials)
- Transmit performances of nondramatic literary or musical works
- Transmit reasonable and limited portions of any other performance
- Display works (comparable to face-to-face displays)

## TEACH Act: Requirements

- Be an accredited nonprofit educational institution
- Include works as part of systematic mediated instructional activity and as integral part of class session
- Select works without outside direction
- Only transmit works to students enrolled in course
- Only use legally acquired works
- Not select digital works made/marketed primarily for use in the classroom as integral part of class

## Four Factors of Fair Use

### Purpose and Character of the Use

- a) Educational vs. Commercial
- b) Transformative vs. Reproduction

\*\*MOOCs – educational or commercial?

### Nature of the Copyrighted Work

- a) Technical vs. Artistic
- b) Factual vs. Imaginative
- c) Published vs. Unpublished

### Amount and Substantiality of the Portion Used

- a) Larger quantity than needed to meet pedagogical objective?
- b) Selection is not “heart of the matter”

### Effect of the Use on the Market

- a) Ready market or license for the original?
- b) Avoiding payment of royalties?

\*\*MOOCs openness viewed as negative effect upon market for assigned material

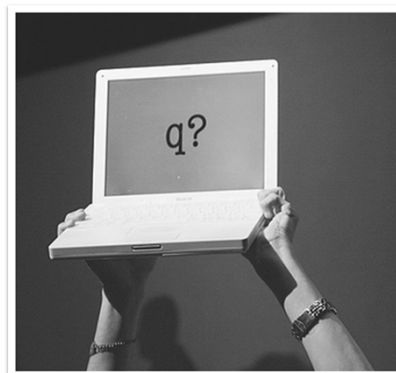
## Copyright and Contracts



Digital or Electronic Resources (databases, e-journals, MP3s) – License Agreement or Terms of Use controls how content may be used, even if proposed use is fair use.

## Before Using Materials Online

- Is the material copyrighted?
- Does your proposed use of a copyrighted work fall within the TEACH Act or fair use?
  - Fair Use Analysis – Fair Use Checklist  
<http://ufdc.ufl.edu/IR00003647>
  - UF Coursera Copyright Guidelines  
<http://ufdc.ufl.edu/AA00007596/00004>
- Is use of the material subject to a license agreement that may alter rights under the Copyright Act?



Questions? by Marcus Ramberg (Flickr.com CC-BY-NC)

## Text Materials - Can I Use That?



*Textual materials (book chapters, journal articles, poems, web site content)*

Post-It by bookgrl (Flickr.com CC BY-NC-ND)

Distribution of materials to students = reproduction, ordinarily not display or performance and thus not addressed by TEACH Act.

1. Link to existing digital copy (e.g. content in licensed database) – Not available for MOOC participants if not affiliated with UF
2. Digitize and post electronic copy within bounds of fair use (may be less for MOOCs) – Consider Library reserves for online UF courses
3. Seek permission if not fair use

## Issues and Considerations

- Linking to electronic materials
  - Is it licensed?
  - Is there a persistent or stable link?
  - Use of ARES (Course Reserves)
  - MOOC participants usually will not be able to access licensed resources
- Fair Use or Permission
  - Fair Use Analysis – Fair Use Checklist  
<http://ufdc.ufl.edu/IR00003647>
- Locating and Using Open Access Materials
  - Open Access – free, unrestricted, online
  - Directory of Open Access Journals (<http://www.doaj.org>)
  - Search for pre-print version in authors' own institutional repository



*Video materials – VHS, DVD, streaming video*

## Video: Can I Use That?

Showing of a film or video is a “performance” under the Copyright Act; TEACH Act may be invoked if all the requirements of the Act are present *but* more express limits.

Fair use also available as exception permitting the streaming of video to online classes.

Permitted to circumvent protection measures on DVDs to create digital clips of films. Faculty from all disciplines may do so.

Permission from copyright holder – variety of business models for licensing.

## Issues and Considerations

- Digitization and streaming of DVDs
  - DMCA – in 2010 exemption expanded
  - Terms of Use accompanying DVD may restrict streaming
  - Licensing films for streaming - \$\$\$
  - MOOCs – shorter excerpts may be fair use
- Digitization of VHS (analog) when no DVD (digital) equivalent available – fair use?
- Use of subscription or pay-per-view streaming services (e.g. Netflix, Amazon, iTunes)
- Freely available streaming content
  - You Tube – may not be “legal” content
  - Sites with free/legal streaming content – see <http://guides.uflib.ufl.edu/copyright> “Digital and Streaming Media” tab
  - Library video databases

Playing of an audio clip is a “performance” under the Copyright Act; hence, the TEACH Act may be invoked if all the requirements of the Act are present.

Fair use may also be available as exception permitting the streaming of audio to online classes.



*Sound Recordings – audio cassettes, audio CDs, MP3s*

## Audio: Can I Use That?

### Issues and Considerations

- Pre-1972 Sound Recordings
  - Not protected by federal law – protected by state law until February 15, 2067. After that date they will enter the public domain
  - Fla. Stat. § 540.11 - permits streaming by non-profit, educational institutions (this does not include MOOCs)
- Conversion of analog works
- License restrictions on digital recordings
- Locating copyright free audio works
  - Creative Commons licensed audio works
    - <http://ccmixter.org>
    - <http://jamendo.com>
  - Public Domain audio works
    - Library of Congress National Jukebox (<http://www.loc.gov/jukebox/>);
    - Musopen (<http://www.musopen.com/>)

Showing of an image to an online class is a “display” under the TEACH Act.

Fair use may also be available as exception permitting the display of images

## Images: Can I Use That?



Collage Sheet by Becky F. (Flickr.com CC-BY)

*Images – photographs, movie stills, posters, art prints*

## Issues and Considerations

- Image source – legal copy?
- Fair Use Issues
  - Quantity of Images
  - “Transformiveness”
- Royalty free image sources
  - Creative Commons search
    - <http://search.creativecommons.org>
  - Public Domain Images
    - Library of Congress American Memory Collection (<http://memory.loc.gov/ammem/browse/ListSome.php?format=Photograph>)
    - Public Domain Sherpa (<http://www.publicdomainsherpa.com/public-domain-photographs.html>)



# Questions?

## Copyright Questions and Information

EMAIL: [christine.ross@ufl.edu](mailto:christine.ross@ufl.edu)

PHONE: (352) 273-2710

OFFICE: Library West 522

Twitter – “campuscopyright” and “UFScholComm”

Blog – <http://campuscopyright.wordpress.com>

Copyright Guide <http://guides.uflib.ufl.edu/copyright>

Open Access Guide <http://guides.uflib.ufl.edu/openaccess>

## E-Reserves (ARES) Questions and Information

Paul McDonough, Head of Course Reserve Unit,

[pmcd@ufl.edu](mailto:pmcd@ufl.edu) or 273-2523

