What do these have in common?
Copyright Requirements

• Original
  – not copied + a minimal degree of creativity

• Work of authorship
  – including not only literary, but also musical, dramatic, choreographic, pictorial, graphic, sculptural, audiovisual, and architectural works

• Fixed in a tangible medium of expression
  – embodiment is sufficiently permanent to permit it to be perceived for a period of more than transitory duration
• Notice and registration are *not* required to obtain copyright
• Neither is publication
• Copyright attaches *automatically* upon creation
• But notice and registration do provide certain advantages
Which means that . . .

• Pretty much everything is copyrighted
  – Including not only your books and articles, but also your drafts, syllabi, exams, web pages, letters and e-mail messages to your friends, and even the notes you are taking (and doodles you are drawing) right now
  – And also including other people's books and articles, drafts, syllabi, exams, . . . that you want to incorporate into your own works
  – And even including students' works!
Copyright v. Plagiarism

• Copyright protects only the expression, *not* the underlying facts or ideas
  – Copying someone else's facts or ideas may be plagiarism (or patent infringement or . . .), but it's not copyright infringement

• Crediting the source is *not* a defense to copyright infringement
  – *Not* crediting the source *is* plagiarism
Exclusive Rights of Copyright Owners

• Reproduction of the work in whole or in part
• Preparation of derivative works
  – e.g., translations, musical arrangements, dramatizations, sound recordings, and second editions
• Distribution of copies of the work to the public by sale, gift, rental, loan, or other transfer
  – limited by the "First Sale Doctrine"
• Public performance of the work
• Public display of the work
  – also limited by the "First Sale Doctrine"
Who is the owner?

• The creator is the owner
  – If two or more persons jointly create a work, they are joint owners with joint rights
• Except for "works made for hire"
  – By an employee acting in the scope of employment
  – By an independent contractor *if* the contract makes it a work for hire and *if* it's the right kind of work
  • Money *doesn't* talk
Permissions and Transfers

• The exclusive rights are both independent of each other and individually divisible
• 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
A Typical Copyright Policy

• Faculty ordinarily retain copyright in their scholarly and artistic works, unless created:
  – as part of a sponsored program subject to specific obligations to another party, or
  – with more than insignificant use of University facilities, resources, or equipment, or
  – pursuant to a special assignment

• Works by students as students are their own
  – Works by students as employees are works for hire
It's not infringement if . . .

- You are the copyright owner
- There is a specific statutory exception
- You have express permission
- You have an implied license
- The work you are using is in the public domain
- What you are doing is "fair use"
§ 110(1): Classroom Use

• Notwithstanding the provisions of section 106, the following are not infringements of copyright:

(1) performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made.
Old § 110(2): Distance Education

• Notwithstanding the provisions of section 106, the following are not infringements of copyright:

(2) performance of a nondramatic literary or musical work or display of a work, by or in the course of a transmission, if (A) the performance or display is a regular part of the systematic instructional activities of . . . a nonprofit educational institution; and (B) the performance or display is directly related and of material assistance to the teaching content of the transmission; and (C) the transmission is made primarily for (i) reception in classrooms or similar places normally devoted to instruction . . . .
TEACH Your Children Well

• Technology, Education, and Copyright Harmonization Act
• Signed into law on November 2, 2002
• Amended § 110(2) to facilitate use of copyrighted materials, without permission, in asynchronous, web-based distance education
• Both expands and narrows the scope of our rights in this regard
TEACH Act Provisions

• Limited to *accredited* nonprofit educational institutions
• Continues to permit the performance of nondramatic literary and musical works
• Performance of other works is also permitted, but only in "reasonable and limited portions"
• Continues to permit the display of (almost) any work, but limited to "an amount comparable to that which is typically displayed in the course of a live classroom session"
TEACH Act Provisions

- Excludes the performance and display of works "produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks"
- Excludes a performance or display "that is given by means of a copy . . . that is not lawfully made and acquired" if "the transmitting . . . institution knew or had reason to believe [it] was not lawfully made and acquired"
TEACH Act Provisions

- Performance or display must be "made by, at the direction of, or under the actual supervision of an instructor"
- Performance or display must be "an integral part of a class session offered as a regular part of the systematic mediated instructional activities" of the institution
- Performance or display must be "directly related and of material assistance to the teaching content of the transmission"
TEACH Act Provisions

• Transmission must be "made solely for, and, to the extent technologically feasible, the reception of such transmission [must be] limited to students officially enrolled in the course for which the transmission is made"

• Institution must have a copyright policy, include copyright notices, and inform faculty, students, and relevant staff about copyright law
TEACH Act Provisions

- Institution must employ "technological measures that reasonably prevent retention of the work in accessible form by recipients of the transmission . . . for longer than the class session" and "unauthorized further dissemination of the work in accessible form by such recipients to others"
- Institution must not interfere with "technological measures used by copyright owners to prevent such retention or unauthorized further dissemination"
Huh?

- Reasonable, not perfect
  - Password restrictions
  - "Random" URLs + Robot Exclusion Protocol/Metatags
  - Streaming rather than downloading
  - Thumbnails/low resolution images
  - Disable "right click"/copying
  - Electronic shrinkwraps and watermarks
  - "Digital rights management"
Fair Use Factors

- Purpose and character of the use
  - personal/educational/transformative v. commercial
- Nature of the work being used
  - factual v. creative
- Amount and substantiality of the portion used in relation to the whole
  - small v. large, both quantitatively and qualitatively
- Effect on the market for the original
  - not of your individual use, but of the type of use