

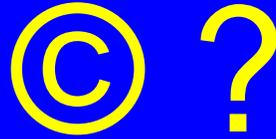
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What do these have in common?

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/transformativ 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