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FREQUENTLY ASKED QUESTIONS ABOUT COPYRIGHT IN HIGHER EDUCATION

I. The Basics

What is copyright?

Copyright is the doctrine of federal law that invests the “author” of an original creative work that is “fixed in a tangible medium of expression” with certain exclusive rights to that work for a limited period of time and subject to certain defined and certain implied limitations. The Copyright Act of 1976 is set out in Title 17 of the United States Code. It was amended in 2002 to address issues raised by distance education transmissions of copyrighted materials.

What is the purpose of the copyright laws?

Congress’s right to create copyright laws is enumerated in the U.S. Constitution. Article I, Section 8, Clause 8 gives Congress the power to create a copyright statute to “improve society by increasing knowledge.” Copyright law seeks to achieve this by balancing the rights of the public to absorb and use new knowledge with the rights of the creator of the knowledge to benefit from his or her efforts, in order to create an incentive for increasing knowledge.

What does copyright protect?

Copyright gives the copyright holder the exclusive right to reproduce the work, publish and distribute the work, adapt the work, or perform or display the work for a certain period of time after its creation. If you are not the copyright holder and you do any of those things with a copyrighted work without first obtaining permission, you run the risk of infringing the copyright.

A work whose copyright has expired, or that was never copyrighted in the first place, is

said to be “in the public domain” and may be freely reproduced, performed, displayed, or otherwise used without restriction.

What kinds of works can be copyrighted?

- Literary works
- Musical works
- Dramatic works
- Scientific works
- Software
- Choreography
- Pictorial, graphic and sculptural works
- Motion pictures
- Sound recordings
- Architectural works
- Compilations and databases of any of the above categories, to the extent they reflect original thought in the selection or arrangement of the elements.

What kinds of works cannot be copyrighted?

- Facts
- Ideas
- Processes or Procedures
- Concepts
- Principles
- Systems or methods of operation
- Discoveries

The important point here is that while an author’s individual expression of the facts, ideas, etc. is protected by copyright, and discoveries may give rise to other intellectual property rights, the rest of the world retains the right to make other creative expressions of the same facts, ideas, and so forth without permission of an author who has already written about them.

- Works created by an officer or employee of the United States Government, acting within the scope of his or her official duties.

The official work product of U.S. Government employees may be used freely (as the product of your tax dollars at work.)

How does a work become copyrighted?

Prior to 1978, the intent to retain copyright had to be asserted on the document or other work itself. “© year name” or “copyright” or similar was required to be affixed to any work

intended to be copyrighted, and failure to make that affirmative statement waived the copyright. Since 1978, this is no longer true and any covered creative work is automatically subject to copyright rights. A copyright owner can enhance his or her chances of prevailing in a copyright infringement suit by affixing a copyright notice to the work and by registering the copyright with the federal government, but neither is a prerequisite.

How do I choose a copyright date for a work that is regularly updated?

If you are affixing a copyright notice to a work that is being republished or updated, it's a good idea to use a date range that starts with the earliest date of publication. For example, this FAQ could carry a notice that read "© 2008-2014 University System of New Hampshire."

How long does copyright last?

In the United States, all works published before 1923 are in the public domain and most works published after 1977 are protected for the life of the author plus 70 years. Works created and/or published between 1923-1977 are subject to a potentially shorter copyright (see chart below). Nevertheless, a general rule of thumb is that if the work you want to use is under copyright now, it will be under copyright until after you retire.

DATE OF WORK	PROTECTED FROM	TERM
Created 1-1-78 or later	When work is fixed in tangible medium of expression	Life + 70 years (or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation).
Published before 1923	In public domain	None.
Published from 1923 - 63	When published with notice	28 years + could be renewed for 47 years, now extended by 20 years for a total renewal of 67 years. If not so renewed, now in public domain.
Published from 1964 - 77	When published with notice	28 years for first term; now automatic extension of 67 years for second term.

Created before 1-1-78 but not published.	1-1-78, the effective date of the 1976 Act which eliminated common law copyright.	Life + 70 years or 12-31-2002, whichever is greater.
Created before 1-1-78 but published between then and 12-31-2002.	1-1-78, the effective date of the 1976 Act which eliminated common law copyright.	Life + 70 years or 12-31-2047, whichever is greater.

(Chart courtesy of Lolly Gasaway, University of North Carolina)

<http://www.unc.edu/~unclng/public-d.htm>

For a more detailed explanation of when a copyright on a particular type of work expires, including some nuances of the effect of publication outside the United States, please see Peter B. Hirtle's *Copyright Term and the Public Domain in the United States*:

http://www.copyright.cornell.edu/public_domain/

What's the difference between a copyright and a trademark?

Copyrights, as discussed above, are really a bundle of rights that control the distribution and creative use of an original creative work. A trademark is a word, phrase, symbol and/or design that identifies the source of goods offered for sale or distribution. Trademark law is focused on preventing consumer confusion, and in order to prevail on a claim of trademark infringement, the trademark holder has to show a likelihood that consumers will mistake the infringer's goods for the trademark owner's goods. By contrast, you can infringe a copyright even if it's perfectly clear that you aren't the original creator of the work.

What are the risks of infringing a copyright?

The potential penalties for infringement can be very harsh, and can be levied against individuals as well as institutions. A court can award up to \$150,000 for each separate act of "willful infringement," which means that you knew you were infringing and you did it anyway. Ignorance of the law, though, is no excuse. If you don't know that you are infringing, you still will be liable for damages - only the amount of the award will be affected by your lack of dishonorable intentions. In addition, an award of damages can include attorneys' fees for the other side. Bottom line: you don't want to be found to have infringed a copyright in a lawsuit.

Gee, that sounds bad. But we use copyrighted materials in teaching all the time! How can I make sure I don't get sued?

Well, the good news is that there is a general exception to copyright protection for works used in face-to-face instruction in the classroom of a nonprofit educational institution. "Used" in

this context means displayed or performed in the classroom – the exception does not give you license to distribute materials that will be taken away from the classroom.

If your use doesn't conform to those limits, here are two ways to use copyrighted works without getting sued. Either:

- (1) Obtain permission or purchase a license to use a copyrighted work; or
- (2) Use excerpts of copyrighted works without specific permission under the “Fair Use” exception described in Section 107 of the Copyright Act, “including such use . . . for purposes such as criticism, comment, news reporting, teaching (including multiple copying for classroom use), scholarship, or research[.]” Some, although not all, use of copyrighted works in teaching falls within the “fair use” exception.

II. Using Copyright-Protected Works in the Classroom

A. The Face-to-Face Exception

The face-to-face exception for classroom display is not fair use, which is a limitation on the protections of copyright; rather, it is an exception from copyright protection. It's important to remember that this exception covers face-to-face instruction IN the classroom – a significant limitation. The rationale behind this exception is that classroom time is precious, and instructors won't have the time to make copious use of copyrighted material that runs any risk of diluting the value of the copyright – so the public good obtained by allowing educational uses of the materials outweighs the cost to the copyright owner.

I teach Art History. Do I have to buy a license to show slides of paintings in my lectures?

No, you don't. The performance or display of a copyrighted work by instructors or students in the course of face-to-face teaching activities is not an infringement of copyright. The one restriction is that the copy of the work you display must itself be lawfully obtained – you can't use bootlegged materials.

In today's Internet-infused world, in which all sorts of stuff is legally available for you to view but not download, “lawfully obtained” can be less obvious than one might think. It is permissible to use a live web link in your classroom to display materials available on the Internet, however, so if you are unsure about whether you can download materials you want to show your class, one way to work around that would be to set up a live feed and display directly from the website.

I teach Film Studies. Can I show entire films to my class?

Yes. If the performance or display of a copyrighted work is from a recording (such as a

motion picture or audio recording), it must employ a lawfully made and obtained copy of the work. So, for example, you can buy a copy of a movie on DVD, or borrow it from the library, and show it in your film class, but you cannot download a bootleg copy from the Internet and show it. You should not make permanent recordings from radio or TV broadcasts for classroom use under the face-to-face exception, either, although there has never been a definitive ruling on whether this would fall outside the boundaries of fair use. It is acceptable to use recordings of radio or TV broadcasts in class for a period of 14 days after the broadcast.

Does the film showing have to be in my classroom, which doesn't have a good screen, or can I arrange to have it shown at the student union without a license because it's for my class?

For purposes of this exception, your classroom is anywhere you and your students meet face-to-face, and that can be an appropriate screening room at the student union or anywhere else on campus. The audience for an unlicensed film viewing must be limited to your students, however; you cannot open the viewing up to the public, even if all your students will also be there and you'll be discussing the film at your next regular meeting.

I'm having my students watch "The Sorrow and The Pity," which is four hours long. I can't find a good time for all of us to meet at the student union (and besides, I've already seen it, I just want the students to watch.) Can I stream the film on Blackboard for my students to watch at their convenience?

Probably not. "Face-to-face" means you and your students in the same room, and while some of the F2F exceptions have been extended to include distance learning, entire films aren't included even in a password-protected environment. Please see the section on distance learning, below, to learn more.

B. Fair Use

What is "fair use" of copyrighted material?

Generally, fair use is any copying of copyrighted material done for a limited and "transformative" purpose. ("Copying" can mean both creating a physical copy of a work or an excerpt of it, or inserting a work or excerpts of it into another work.) The most common recognized "transformative" purposes are commentary, criticism, and parody. Although parody is almost never an infringement of copyright, commentary and criticism can still get you in trouble if you quote too extensively or otherwise dilute the value of the copyright or do it for the wrong – usually, commercial – reasons. Whether or not your use of copyrighted work falls within the boundaries of fair use is determined by looking primarily at four factors:

1. **The purpose and character of the use.**

Factor 1 calls for a judgment of where a use falls on a spectrum of possible uses. Educational use by a nonprofit organization is on the far (safe) end of Factor 1. Selling an item containing copyrighted work for profit (for example, pirated movies or software, bootleg Louis

Vuitton handbags) is on the other end.

2. **The nature of the copyrighted work.**

Even if you are using work for nonprofit educational purposes, you can be guilty of infringement of copyrighted educational materials. For example, if the copyrighted work is a textbook or other material intended for sale for educational uses, it is much less subject to fair use in classrooms than other types of materials

3. **The amount and substantiality of the portion used relative to the copyrighted work as a whole.**

If the work is a 1000 page tome and you quote two pages of it, you are probably safe. If the work is a short poem or essay, you may be safe quoting the entire thing because it is impossible to quote less than that. Everything between those extremes is a judgment call.

4. **The effect of the use on the potential market for or value of the copyrighted work.**

Effect of the use can take two forms. First, is the use you are making the one the copyright holder mainly meant to use (for example, a textbook used in class, or an entire novel copied into your coursepack or posted online instead of having students purchase the book). Second, even if the use you are making is not the primary one, are you making copyrighted material available in such a way as to dilute the market (for example, are you making digital media available for legitimate purposes but in a way that can be easily pirated and redistributed?)

That sounds complicated. Are there any shortcuts for figuring out what I can do?

Yes! As part of the debates leading up to the Copyright Act of 1976, a number of publishers, authors, and education associations developed a set of “safe harbor” guidelines for the fair use of reproductions of copyrighted work by teachers in nonprofit educational institutions. These guidelines have since been endorsed by the American Council on Education and cited in many court decisions. Under the “Classroom Guidelines,” faculty members will not violate copyright laws by making a **single copy** for scholarly or research purposes of:

- A chapter from a book
- an article from a periodical or newspaper
- a short story, short essay, or short poem
- a chart, graph, diagram, drawing, cartoon, or picture

Faculty are also safe making **multiple copies** for classroom use of materials that meet the following restrictions:

- Brevity: this means (i) a complete poem if less than 250 words and if printed on not more than two pages or (ii) an excerpt of not more than 250 words from a longer poem (though either limit may be expanded to permit the completion of an unfinished line); (iii) a complete article, story, or essay consisting of less than 2,500 words or (iv) an excerpt of

not more than 1,000 words or 10% of any other prose work, whichever is less, but in any event a minimum of 500 words (though either limit may be expanded to permit the completion of an unfinished paragraph); (v) a single chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue

- Spontaneity: a teacher may use material selected in preparation for a course so soon before the start of the course that seeking permission was not practical, but may not reuse the same excerpted material in subsequent courses or terms without seeking permission. As a practical matter, this means that print coursepacks will not fall under the Multiple Copy fair use guidelines because of the length of lead time necessary for preparing the coursepacks. Copyrighted material in coursepacks should be used with permission. But it is common, and acceptable, to decide at the last minute to include materials meeting the brevity restraints above in materials made available online or via Blackboard.
- Cumulative effect: teacher must limit multiple copy use to one article or two excerpts per author and three excerpts per periodical volume (other than current news periodicals) or other collective work, in one offering of one course.
- Notice/No profit: In addition, a copyright notice must be included on all copies distributed to students; the number of copies may not exceed the number of students enrolled in the class; and students may not be charged any fee in excess of the cost of making the copies.

Is that the end of the analysis for fair use in the classroom?

No. The Guidelines define uses that are always safe; they do not purport to define the outside limits of fair use. Copying in excess of these limits may still be fair use, but it will be in a “gray area” that can be hard to defend. Consequently, USNH abides by the Guidelines and advises faculty to seek permission for uses that exceed the guidelines.

I’m going green – I no longer distribute anything on paper but put all the handouts on Blackboard. Can I do that?

Yes, subject to the same limitations described above. In particular, you need to be mindful that Blackboard doesn’t eliminate the need to get permission for multiple uses of the same work.

Can I use copyright-protected work in my e-reserves?

In general, the multiple copy fair use guidelines also apply to e-reserves and to the online use or downloading of electronically stored material. From the point of view of the copyright holder, placing a single purchased electronic copy of a work into e-reserves where it can be simultaneously accessed by multiple students is no different from buying a single copy of a book

and making multiple photocopies of it for the reserves so that your students won't have to wait for the book to be in – in other words, you are getting a use consistent with owning multiple copies but have only paid for one copy.

In particular, the right to copy from electronic materials that the institution has purchased is negotiated with the individual publisher or vendor supplying the license, so you should check the terms of the particular work you want to use. The library should be able to help you with this. You are responsible for verifying that materials you place on e-reserves are password-protected and available only to students in the course.

How do I get permission for uses of copyrighted works that exceed “fair use”?

For most classroom uses, your institution's campus Copying Services can handle obtaining the necessary permission and calculating the cost of any resulting royalties per copy of your coursepack. If the use you want to make is digital or online, your institution's library can help you locate and contact the copyright holder, and your IT office may have resources you can use. You can also obtain permission directly by contacting the copyright holder, usually the publisher, of the work you want to use. Depending on the nature of the work, some copyright holders will grant permission for free in order to support the educational mission or to promote or publicize a little-known work. Others may charge a reasonable fee. If the cost is prohibitive, you will need to limit your use to the boundaries of fair use.

C. Uses of Music

My institution has an ASCAP/BMI/SESAC license that permits my students to perform copyrighted music in student recitals and concerts. Can I make a recording of the student's performance?

Yes, you can. The standard ASCAP/BMI/SESAC license pertains only to performances (live and recorded) and doesn't cover making new recordings, but the 1976 “Guidelines for the Educational Uses of Music” specifically permit an institution or instructor to make one archival copy of a student performance of copyrighted music and retain that copy. These Guidelines were created by the following organizations: The Music Publishers' Association of the United States, Inc., the National Music Publishers' Association, Inc., the Music Teachers National Association, the Music Educators National Conference, the National Association of Schools of Music, and the Ad Hoc Committee on Copyright Law Revision.

Can I give a copy of the recording to the student performer?

The 1976 Guidelines don't specifically state the uses you can make of a student recording, but it is accepted practice at most institutions to allow the student to retain a copy of his or her own performances. In addition, faculty and students can listen to archival copies of student performances and use them under the same “fair use” guidelines that would apply to a

commercially available recording of the music.

Can I charge the students a fee for a copy of the recording? The blank CDs came out of my departmental budget.

Again, the Guidelines don't address this but it is widespread practice to charge a nominal fee that covers the cost of making and distributing a copy of student performances. Be careful not to give the impression you are making a profit beyond the cost of providing students copies of their own performances, even for a good cause; for example, don't sell CD copies of the end-of-year concert to audience members to raise money for the scholarship fund. For that, you would need a recording license known as a mechanical license, which the institutions don't routinely maintain.

OK, I get that I can't sell copies to anyone other than the performers without a license. Can I tack on a surcharge to raise money for the music department? Even a minimal amount, spread across the entire band/orchestra/choir would help offset the cost of the music I have to purchase for them.

No, for that you need to get a mechanical license and pay royalties. If you need to charge a user fee for materials, please work with your department to do that directly.

I sponsor a campus performing group. Does the ASCAP/SESAC/BMI license allow them to perform copyrighted music at off-campus events?

No, the licenses cover only uses of music on campus.

What about broadcasting by the campus radio station?

The institutional licenses cover the royalties owed to the publisher and songwriter for songs played on the campus radio station. The royalties owed to the performer(s) for broadcast rights are handled separately. There is also a separate license fee to the performer for webcasting.

Does the ASCAP/SESAC/BMI license cover all songs we might like to use?

No, although among the three of them most of the universe of copyrighted music is covered. As a general rule of thumb, if a composition or song has been released commercially, it will be covered by one of those licenses. If it has not, you should affirmatively check before performing it.

Is the song "Happy Birthday" really under copyright?

Yes, 90 years and counting! That doesn't mean you can't sing it at your child's birthday party, but public performances (including, for example, at a restaurant) generate liability for

royalties. Fortunately, it is covered by the institutional licenses so you can sing it in the campus dining halls.

III. Copyright-Protected Works in Distance Education

I teach a distance learning class on the Internet; my students hear me lecture, and respond to my classes, online. Can I use copyrighted materials the way I could if my students were “face to face” in a classroom?

Mostly, yes, but there are some additional significant restrictions. The 2002 TEACH Act expanded the face-to-face performance or display exception to cover distance education transmissions, with the following additional limitations:

- Only “limited portions” of works other than non-dramatic literary or musical works may be transmitted. (Most importantly – you may not stream entire dramatic films.)
- The display cannot exceed the amount or length of a typical classroom display.
- Transmission can be made solely for and reception limited to students officially enrolled in the course.
- The institution must have established policies on complying with copyright laws which have been communicated to faculty, staff, and students, and students must be specifically advised that the materials excerpted for the course may be subject to copyright protection

What exactly is a “non-dramatic literary work” – does that include or exclude literature?

“Dramatic” means dramatized (acted out), not simply fictional. The prohibition on showing the entire work is limited to dramatizations with dialogue. Movies, plays, or operas may not be played in their entirety, but readings or symphonies can be. One caveat, though: A complete transmission must be an “integral part” of the course – directly related to and of material assistance to the teaching content of the class. As a rule of thumb, if you wouldn’t ordinarily read an entire novel or play an entire symphony, etc. in your classroom due to time constraints, you can’t use the face-to-face teaching exception to post an online reading or recording, either. The face-to-face exception continues to apply only to the materials you would use in your lecture, not to the readings, etc. that you expect students to do on their own time.

Do the USNH institutions have an institutional policy in place that meets the requirements of the TEACH Act?

Yes, so you can make “face-to-face” use of materials online as described above.

My former institution let me stream entire movies in Blackboard on an “on demand” basis as long as the access was password-protected. Why doesn’t USNH allow this?

As discussed above, the TEACH Act expressly removed the F2F exception for full-length dramatic movies from distance learning platforms. Some institutions have chosen to argue that doing so anyway constitutes fair use. USNH has elected to follow the letter of the law until one of those institutions successfully defends this idea in court.

Does it help if I limit the “on demand” period to a few weeks?

No. There is a separate 14-day limit on using taped broadcasts in your classroom without violating the “no bootlegs” rule, but those uses still have to meet the other face-to-face instruction requirements and/or the TEACH Act.

Someone else uploaded the entire movie to Youtube. It’s clearly in violation of copyright, but Youtube hasn’t taken it down yet. Can I link to it?

Legally, yes, although you should think about whether you are violating the Golden Rule. As long as you are only linking to the content and not embedding it in anything you distribute, you are not the perpetrator of the unlicensed distribution. But don’t count on the upload being there forever – copyright owners do periodic sweeps of Youtube. You might also consider whether your students can get inexpensive legal access to the content you want them to see by subscribing to a service such as Netflix.

I’m teaching an online course in which there are no lectures. I post materials and assignments on Blackboard, students complete the assignments and submit them online, and I grade them. The course is password-protected and limited to students enrolled for credit. Does the TEACH Act cover the readings and recordings I put into Blackboard for them?

No, it doesn’t. The TEACH Act wasn’t passed until 2000 but in important respects it was already somewhat out of date, in that it addresses the needs of the early model of distance education (lectures accompanied by homework, similar to brick-and-mortar class) rather than the model increasingly common now, in which there is no “face time” at all.

Nevertheless, although the TEACH Act doesn’t allow you to essentially circumvent the copying restrictions by putting a digital copy of materials into Blackboard, the Safe Harbor rules for classroom copying that govern what you can safely distribute to students to take away from the classroom allow you to post those same materials in Blackboard, instead. As noted above, the Safe Harbor rules do not purport to define the limit of fair use.

I teach an introductory survey course on English literature, and I use several “fair use”-sized excerpts (less than 10%) of the same classic novels every year. Do I have to get permission to put those excerpts on e-reserve?

As of the date of this update (February 2014), there is some question whether the single-use rule will continue to apply to excerpts put on e-reserve. At least one federal court (in Georgia) has found that as long as there is no market for electronic excerpts, fair use allows multiple uses of the same excerpt as long as it does not exceed 10% of the entire work.

What happens when I put my work, or my students' work, on the internet?

Uploading content onto the internet constitutes a publication. If your or your students' work is entirely original, you can post it (or have them do so.) If people other than you or your students are featured in the original work, you (or they) need to obtain permission from the other participants, ideally in writing. If it contains the copyrighted work of others, you need to either follow fair use guidelines or obtain a license from the copyright holder. It doesn't matter whether you are making any money off the publication.

IV. Digitization and Copyright

In order to put anything on Blackboard, I have to digitize it. Is that allowed?

A digital version of an analog work is considered a derivative work, and the copyright owner holds the exclusive right to create a digital version of her work. If a digital version already exists, you are expected to buy it rather than digitize an analog version for online use. If a digital version does not exist, or if the excerpt you are using is small enough to qualify as fair use, you may digitize your own copy for use in Blackboard pursuant to the TEACH Act.

I have a lawfully purchased VHS copy of a film I use all the time in my lectures. It's wearing out. Can I convert it to a digital format and burn it to a DVD?

Usually, not without permission. As discussed above, the copyright owner holds the exclusive right to create a derivative digital version of his work. As anyone who spent a lot of money replacing all her vinyl records with CDs knows, there is often a lucrative market for digital versions of works that have already saturated the market in analog form.

If you want a digital version of your VHS film, the simplest lawful way to obtain one is to buy the DVD version.

It's not out on DVD, and my VHS tape is falling apart. Can't I make a preservation copy?

Libraries have certain archival rights, preserved in Section 108 of the Copyright Act, to make copies of copyrighted works in formats that promote preservation. There is not yet complete agreement on whether the library can use the "preservation" copy for circulation in a different format without violating copyright, though many libraries view this as an accepted practice. If you are working with media owned by your institution's library, the library should

take the lead in preserving the original work. Media that have been digitized for preservation by the library cannot be circulated in the digitized format without permission from the copyright holder.

As an individual, the preservation clause in the copyright statute is not available to you. If the work is not available on DVD and you need a copy you can rely on, you have two options to avoid risking breach of copyright: you can seek permission from the copyright owner to digitize the analog copy you have, or you can purchase a new VHS copy.

In addition to the fragility of the tape, it's getting harder to find campus equipment that even plays VHS tapes anymore. Can I digitize it for classroom use on the ground that the technology is obsolete?

Someday, probably soon, VHS technology will be deemed obsolete enough to support digitization without permission, but for now it's still a copyright violation in most circumstances to digitize an entire film or recording without permission.

OK, I don't really need the entire movie for my class lecture – just ten minutes or so. Can I digitize just those ten minutes from my VHS tape?

Digitization of a small percentage of an analog work for classroom use would probably fall within the realm of fair use. As a general rule, 10% or less of a work is considered acceptable, so ten minutes of a typical 90-minute film is low-risk.

I want to make a "mix DVD" of short clips from multiple longer DVDs for my lecture, so that I won't have to cue up ten different DVD players or take out and put in multiple DVDs. Can I break the encryption on the ten DVDs ("rip" them) to extract the 1-2 minutes I need from each?

As of the 2010 exceptions to the Digital Millennium Copyright Act (DMCA) all faculty and film/media studies students have the right to break copyright encryption to extract fair-use-length clips for educational uses.

Can I put the "mix DVD" on Blackboard?

Yes, because to meet the DMCA exclusion described above, your clips will also meet the standard of fair use.

A few years ago, I replaced all my compact discs with MP3 files. Can I sell my compact discs at the local flea market without violating copyright?

Yes, you can. The "right of first sale" doctrine, first set out by the Supreme Court in 1908, provides that once you purchase a copy of a copyrighted work, you have the right to resell it.

Now some of those MP3 files are out of date or I no longer need them. Can I resell them, as well?

That's where things start to get interesting. You can sell the exact copy that you bought and own – but you can't make a copy to sell to someone else, even if you destroy your copy in the bargain. When you upload or send someone else a file, you are making a copy – and that isn't covered by the first sale doctrine. So, unless you can find a way to sell your MP3s without copying them (for example, by selling the hard drive on which they reside) you cannot sell or even distribute them for free without violating copyright.

V. Faculty Copyright Rights

How do I protect copyright in my own work?

You automatically own the copyright in your own work, but you must register your copyright with the U.S. Copyright Office before you can sue someone else for infringing your copyright. Although you can register at any time, “timely registration” within three months of publication will make it much easier to prove an infringement case, should you later have to bring one. Registration is relatively inexpensive (as of 2007, it cost \$45 per work) and simple. Forms can be found at <http://www.copyright.gov>.

What happens if I publish my work in a journal that asks me to sign over my copyright as a condition of publication?

Many journals do require that authors sign over some or all of their copyright rights as consideration for the acceptance of the work for publication. As a practical matter you may not be giving up anything of monetary value, if the work is not valuable until a peer-reviewed journal publishes it and/or there is a limited market for selling it. Nevertheless, you should read the terms of any copyright transfer very carefully and be sure you know what you are agreeing to give up. If you have questions about the agreement terms, contact the UNH Office of Research Partnerships and Commercialization for assistance.

Who owns the copyright in a jointly-produced work?

The authors of a joint work are co-owners of the copyright. A “joint work” is defined as an original work prepared by two or more creators with the intent that their respective contributions be merged into an inseparable or interdependent whole work. Each contributor's contribution must be an original product that could be copyrightable standing alone. Nevertheless, just making a substantial or valuable contribution to a work is not enough to create co-ownership in the resulting copyright. If there is a dispute, a court will look at whether purported co-creators exercised creative control over the work; whether the co-creators expressed an intent to create a joint work; and at the audience appeal of each co-creator's contribution.

My institution is recording my lectures for online courses. Who owns the copyright in these

recordings?

Once your lecture is recorded, it is “fixed in a tangible medium” and becomes a copyrighted work (which it would not have been if you were delivering it orally without recording, although your lecture notes are a copyrighted work.) A lecture is a “traditional scholarly work” within the meaning of most university IP policies, and although work you do in your role as a lecturer is work for hire, your institution may have ceded copyright in it back to you. (See below).

If your institution has retained a royalty-free license in your work for hire while ceding you the copyright, it has a royalty to continue to use the lecture with or without your consent. But don’t panic – independent of the copyright in the lecture, which the institution has the right to use, you still control the rights to your own image and voice and you can refuse to consent to the future transmission of your image and voice in this way, if you wish.

How do I protect my voice and image?

Before transmitting your lecture online, your institution needs to obtain a release from you giving permission for the use of your voice and image. You can set limits on the permission you grant.

A. Copyright for work of UNH Faculty

Isn’t my work for UNH considered “work for hire”?

Copyrightable works developed in the course of completing one’s University duties are assigned according to the UNH IP Policy, which can be found at: <http://usnholpm.unh.edu/UNH/VIII.Res/D.htm>. Generally speaking, copyrightable material belongs to UNH if it was developed in the course of a university employee’s assigned duties, developed using university resources, or developed in the course of a sponsored research or other binding agreement which dictates the ownership of any resulting intellectual property. The main exception is that in the case of “Exempted Scholarly Works,” UNH waives its ownership right in the interest of the author; however, UNH does reserve a non-exclusive, irrevocable, royalty-free right to use the Exempted Scholarly Works for educational and/or research purposes. Examples of Exempted Scholarly Works include: traditional academic publications, academic software, music, theses and dissertations, photographs, video tapes, works of art, etc. UNH VIII.D.8

B. Copyright for work of PSU Faculty

PSU’s IP policy is under negotiation, and in the absence of a policy the default work-for-hire rules would apply to work completed as part of a faculty member’s PSU duties. PSU’s template for assignment of IP rights can be found here:

https://www.plymouth.edu/office/sponsored-programs/files/2012/10/PSU_IP_Agreement_Final-Template_Revised-9.2012.pdf

Nevertheless, PSU has elected to cede most copyrights in course materials created during the academic year back to the faculty member:

<https://www.plymouth.edu/office/vpaa/psuip/>

Note that materials created by faculty in return for compensation outside the standard academic year are governed by the written agreement for extra compensation, which may assign ownership to PSU.

C. Copyright for work of KSC Faculty

KSC faculty own the copyright in most of their work pursuant to the KSC Faculty Handbook, with the exception of work performed with “significant College Sponsorship” as defined in the Handbook. See:

http://www.keene.edu/admin/handbooks/Faculty_Handbook_2010.pdf

D. Copyright for work of GSC Faculty

GSC does not have an intellectual property policy as of the most recent update of this FAQ.

VI. Student Copyright Rights and Responsibilities

Do students have any rights in the work that they do for my class?

Yes. Students automatically own the copyright in their own work, even though it was written in response to an assignment from you, unless it was created under certain exceptions set out in the UNH Intellectual Property policy. This means both that you cannot appropriate their work without permission (by publishing a compilation of your students’ work on a particular subject, for example) and that you cannot exceed “fair use” of the material without obtaining the student’s permission. Note, however, that the copyright does not extend to the facts or ideas expressed in the students’ work, since those cannot be copyrighted.

If you have any expectation of using a student’s work beyond the class for which it was created, it is a good idea to get a release from all the students for the uses you wish make of it. This would include, for example, the possibility that you will use a student’s work, even anonymously, as an exemplar (good or bad) for future classes.

Can students quote copyrighted works in their class assignments?

The fair use doctrine applies to students as well as to you, and they may use copyrighted material in order to comment on it under the same terms that you can.

I teach a writing course that uses novels that are under copyright to illustrate different types of writing. Can I assign my students an exercise in which they take a scene from an existing novel and rewrite it from another point of view, or change the ending, or similar? Students enjoy this.

Technically, this sort of “fan fiction” is a derivative work controlled by copyright, but as long as the students only “publish” it by turning it in to you or reading it aloud in class, the activity is covered by the face to face exception from copyrights. Therefore, it’s fine to do this as an assignment. Just make sure the students know they might be courting trouble if they later distribute their work outside the classroom.

I assigned my students to go out and interview people on the street for a class project. Everyone interviewed was in a public place, and obviously agreed to be interviewed (they answered questions!) Do I need to tell the students to get releases from their interview subjects anyway?

Yes. Individuals own the rights to their own images. It’s unlikely that an interview subject who agreed to answer questions will object to being included in the class project, but you (and your students) should always get a release in any context outside a clearly newsworthy event. There is a First Amendment exception for news events.

What makes an event “newsworthy” enough to qualify for the First Amendment exception?

To qualify as “news use” of an image, the use has to be immediate and short-term and published in a news venue, and the image must have been taken in a public place in which a reasonable person would not expect his or her actions to be private. Most classroom assignments won’t meet the first prong of that test.

Students’ voices and images can be heard/seen asking questions and participating in discussion in my online lectures. Does that raise any copyright issues?

Students also control the rights to their own voices and images, and if they might be heard or seen in your online lecture, it is advisable to obtain releases from them granting permission to record them. If a student declines to give permission, you can work with your IT staff member to ensure that the student’s voice or image are not captured or recognizable in the final product.

One of my students is under the age of 18. Can s/he sign a valid consent/waiver form?

No. If a student or participant in any activity requiring a waiver or release is a minor, you

must have a parent or legal guardian's permission. Sometimes it will be easier to simply not use that student's work or image. **CAVEAT: Please be careful to ensure that in doing so, you are not discriminating against the student or limiting his/her participation in your course in any way not pertinent to institutional policies concerning minors on campus.**

VII. Where To Go For More Information and Advice

Where can I go for more detailed information on how to apply copyright law?

USNH Resources:

The UNH Intellectual Property Policy can be found at:

<http://usnholpm.unh.edu/UNH/VIII.Res/D.htm>

The KSC Intellectual Property Policy can be found at

http://www.keene.edu/admin/handbooks/Faculty_Handbook_2010.pdf

The PSU statement on faculty ownership of copyrights can be found at:

<https://www.plymouth.edu/office/vpaa/psuip>

The UNH Primer on Copyright Law and Recommended Resources can be found at:

http://www.library.unh.edu/loan/loan/reserves_edit/pdfforms/UNH%20Copyright%20Primer.pdf

UNH Printing Services

<http://www.printing.unh.edu/copyright.html>

Digital Millennium Copyright Act (DMCA) Implementation at UNH is described at:

<http://www.unh.edu/cis/dmca/>

UNH Library

<http://www.library.unh.edu/about/polreg/copyright.shtml>

KSC Library

http://www.keene.edu/academics/library/policies/#course_reserves

PSU Library Course Reserves policies

<http://libguides.plymouth.edu/content.php?pid=366158&sid=2997585>

Outside Resources:

Stanford University Fair Use guidance

<http://fairuse.stanford.edu>

Baruch College's Guide to Using Copyrighted Media in Your Courses
<http://www.baruch.cuny.edu/tutorials/copyright/>

The North Carolina State TEACH Act Toolkit:
www.lib.ncsu.edu/scc/legislative/teachkit

I guess my questions aren't frequently asked – I still have questions. Who can answer them?

Please feel free to contact the following people with additional questions on copyright and intellectual property or to seek advice on a particular project:

USNH General Counsel's Office

<http://www.usnh.unh.edu/fac/offices/counsel.shtml>

Ron Rodgers, Vice President and General Counsel, USNH
ron.rodgers@usnh.edu
862-0960

UNH Office for Research Partnerships and Commercialization

www.orpc.unh.edu

Marc Sedam, Director
Marc.Sedam@unh.edu
862-4130

Maria Emanuel, Ph.D., Licensing Manager
maria.emmanuel@unh.edu
862-4377