Copyright Guidelines

For Those Who Need to Know

NDSU IT Security
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Distance/Online Education

- Develops digital lesson plans, coursework
- Uses third-party copyrighted works
- Conducts research using digital networks, and online resources
- Has students who use copyrighted works
- Delivers teaching/learning materials through the use of digital technology
Well, I’ve done that….I think....

- Copied a TV sitcom episode and posted it online for a psychology lesson?
- Created an economics unit by combining a variety of articles and online resources?
- Used a well known photograph in a teaching master for art appreciation class?
Presentation Outline

• Copyright guidelines
• TEACH Act and Fair Use for online learning
• Digital Millennium Copyright Act
• NDSU policy and procedure
Copyright Law Basis

• Codified in Title 17 (The “Copyright Act”) of the United States Code
  – Lists six exclusive rights of copyright holders, including reproduction and distribution of their copyrighted works
  – Does not require a showing of intent in order to find civil liability for infringement
Copyright Law

• The legal rights granted to an author, a composer, a playwright, a publisher, or a distributor of exclusive publication, production, sale, distribution, adaptation, public performance of a literary, musical, dramatic, or artistic work

• A strict liability without an intent requirement

• Provides for “statutory damages” for each infringed work
  – Recording itself and underlying song or movie score
Copyright Law

• Protects published and unpublished works
• Protects original works of authorship when in fixed tangible medium of expression
  – Sound recordings, musical works, photographs, literary works, dramatic works, motion pictures, other audiovisual works and computer software
• A story or song told isn’t protected until it’s written down or recorded
• Copyrightable work must also be creative – facts are not creative, but method in which they are presented most likely is CR
Owner/creator rights

• An owner of a copyright protected work can:
  – Reproduce the work
  – Prepare derivative works
  – Distribute copies
  – Publicly perform and display works
  – Sell, rent, or lend the work
What is protected?

- Most all original, **tangible** expression is copyrighted immediately upon creation.
- An author is not required to register the work or announce that it is copyright protected.
What isn’t protected?

- Works that haven’t been fixed in a tangible expression
- Titles, names, short phrases, and slogans; listings of ingredients or contents
- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices
- Works consisting of information that is common property and contains no original authorship
Public Domain

- Tangible works that are not copyright protected
  - Works published before January 1, 1923
  - Works published between 1923 and 1978 that did not contain a valid copyright notice
  - Works published between 1923 and 1978 for which the copyright was not renewed
  - Works authored by employees of the federal government
  - Works that the copyright owner has freely granted to the public domain
1976 Revision of Copyright Act

- Works published after January 1, 1978 will be protected during the life of the creator + 70 years.
- Anonymous works are copyright protected until 95 years after publication!
- Reference: Lolly Gassaway “When Works Pass Into the Public Domain”, University of North Carolina
The TEACH Act

• Technology, Education, & Copyright Harmonization Act (November 2002)
  – Allows for the performance and display of copyrighted materials for distance education
  – Primary purpose: to balance the needs of distance learners and educators with the rights of copyright holders
TEACH provides...

- Use of more works in distance learning environments
- Provides students participation in distance learning from anywhere they can access a computer
- Greater freedom for storing, copying, digitizing materials
• Educational institution is accredited & non-profit
• Use must be part of approved instructional activities
• Use is limited to a specific number of students enrolled in a specific class
• Use is for ‘live’ or asynchronous class sessions
TEACH Requirements

• Use does not include transmission of textbook materials, materials usually purchased by students, or works developed specifically for online uses.

• Only “reasonable and limited portions,” such as would be performed or displayed during a typical live classroom session, may be used.
TEACH Requirements

• Institution must have in place copyright policies and procedures informing students that the course may be covered by copyright, and include a notice of the copyright on the online materials.

• Institution must use technical measures beyond assigning a password to ensure compliance with policies. This may include but not be limited to: IP checking; content timeouts; print-disabling, cut and past disabling, etc.
TEACH exemptions not to include

- Electronic reserves, course packs (electronic or paper) or interlibrary loan
- For commercial delivery (Can’t charge students for copying)
- Textbooks or other digital content provided under license from author, publisher, etc.
- Conversion of materials from analog to digital formats, except when the converted material is used only for authorized transmissions and when a digital version of the work is unavailable or protected by technological measures
IMPORTANT!

• TEACH does not supersede fair use or existing digital license agreements
When in doubt…

• Assume the work is copyright protected and ask permission to use it
• Even if you properly quote and/or credit a work’s author, you may still be accused of copyright infringement
• Created to allow the use of copyrighted works for criticism, commentary, parody, news reporting, research and scholarship, and classroom instruction
• Provides a limited basis for people to use the copyrighted work without getting permission from the creator
Fair Use Factors

- The purpose and character of use, including whether use is of a commercial nature or for nonprofit educational purposes
- The nature of the copyrighted work
- The amount and substantiality of the portion used in relation to the copyrighted work as a whole
- The effect of the use upon the potential market value of copyrighted work
Likely to be considered fair use if...

• The purpose and character of use...
  The new work transforms the original work or offers something beyond the original
  – The use is for nonprofit or educational purposes
Likely to be considered fair use if...

- The nature of the copyrighted work...
  - Is a published work
  - Original work is out of print
  - Copyrighted work is factual
Likely to be considered fair use if...

• The amount and substantiality of the portion used in relation to the copyrighted work as a whole:
  – Is the amount of the original work reasonable? (The smaller the better)
  – Is the section of the work the most important part? (Less significant is better)
Likely to be considered fair use if...

• Use does not affect potential market value of the work
  – Should not appeal to the same audience as the original
  – Better the work is used for a different purpose/audience
Guidelines to use – whichever is less

- Allows under most circumstances to copy
  - An excerpt from a work that combines language and illustrations (e.g., children’s book) not exceeding two pages or 10% of the work
  - A poem of 250 words or less, up to 250 words of a longer poem, three poem limit per poet, five poem limit if by different poets from an anthology
Guidelines to use – which ever is less

- An article, short story, or essay of 2,500 words or less, or excerpts of up to 1,000 words or 10% of a longer work
- A single chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper
- Music: 10% or 30 seconds
Guidelines to use – whichever is less

• Video: 10% or three minutes
• Photos and images: Up to five works from one author, up to 10% or 15 works from a collection
• Database Information: 10% or 2,500 fields or cell entries
Not allowed...

• Making multiple copies of different works as a substitute for the purchase of books or periodicals
• Copy the same works for more than one semester, class, or course
• Copy the same work more than nine times in a single semester
• Use of copyrighted work for commercial purpose
• Use of copyrighted work without attributing the author
Web Resource Guidelines

• Not Acceptable:
  – Deep linking to an interior page (need to identify main site)
  – Downloading graphics (fonts, bullets, logos, photographs, illustrations)
  – Framing information from another site without the identifying information
  – Make information from another Web site look like your own
  – Copying a site’s html code
Recommended

• Request permission from creator
• Teach students to ask for permission before using any material and if there is a question
• Use public domain resources
• Develop collaborative efforts with other educators to create public domain resources
Points for technology users

- Information on the Internet: Most likely not in the public domain
- Most software, including freeware, is not in the public domain
- Asking permission is polite, even if you’re not required to do so
- Don’t assume the work posted on the Web is legal
Digital Millennium Copyright Act

• Section 1201 of the Copyright Act
• Purpose: To update copyright law for the digital age
• Areas of interest:
  – Anti-circumvention provisions
  – Limitation of liability for online service providers
  – Notice and take down procedures
DMCA

• Notice and take down procedures
  – DMCA Agent designate
  – Copyright owner submits copyright infringement notification to agent
  – Online service provider must remove or block access and notify individual
  – Resolution steps to be taken
  – DMCA agent notifies owner of resolution

• Covered under NDUS 1901.2 and NDSU 158
Peer to Peer Technology

• Most files shared are copyright protected
  – Exclusive rights: reproduction and distribution
• Heavy bandwidth use results when sharing media (excessive use of NDSU resources)
• P2P can cause computer to become compromised allowing for hackers easier access to personal data or other computers
• Suits against those who infringe have been successful
Peer to Peer Technology

- P2P can cause computer to become compromised allowing for hackers easier access to personal data or other computers
- Scans by RIAA, BSA, MPAA becoming more prevalent
- Suits against those who infringe have been successful

- Chapter 11, Copyright Act
  - Prohibiting unauthorized fixation, trafficking – “bootlegging”- of recordings of live performances
  - The Lanham Act – Trademark law
  - State laws covering unfair competition and misappropriation
  - Laws protecting personal interest of individual creators, performers, & artists
  - Laws of foreign countries
In Summary

• Limit access to copyrighted works to students currently enrolled in the class
• Limit access to materials only for the time needed to complete the class session or course
• Prevent further copying or redistribution of copyrighted works
• Prevent interference with copy protection mechanisms
• Educate students on copyright infringement
Resources

- When US Works Pass into the Public Domain by Lolly Gassaway
  - http://www.unc.edu/~unclng/public-d.htm

- A good online quiz for copyright by TechLearning.com

- The Web Institute for Teachers Copyright learning module for students

- TEACH Act comparisons
  - http://www.unc.edu/~unclng/TEACH.htm

- The TEACH Toolkit (Good resource)
  - http://www.lib.ncsu.edu/scc/legislative/teachkit/overview.html
Questions!

- Copyright, fair use, and the TEACH act are as clear as mud 😞
- When in doubt err on the side of caution, get permission, attribute the author

Thank You!

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