Understanding Copyright Through Real World Scenarios

SIDLIT 2011
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JCCC
The Goal

to empower you to make educated copyright assessments and confidently present the most innovative course material.
Take away points:

1. Most copyright evaluations are about **Risk**, not black and white.

2. The law has special protections for educational institutions.

3. Be **courageous** when using copyright law to improve teaching.
Agenda:

1. Whirl-wind tour of copyright law.

2. Tools to lower risk:
   - Public Domain
   - Linking
   - Special exceptions
   - Fair Use
   - Asking Permission
   - "Orphan" Works

3. Real-world examples
Copyright Law basics 1:

"To promote the progress of science and the useful arts..."
Copyright Law basics 2:
Copyright Law basics 3:

For rights holders:

For users:
Copyright Law basics 4:

Specific exceptions:

Fair Use:
Using copyrighted material: Risk
Steps for evaluating use:

(Stop if "yes" to any)

1. Is there a zero risk alternative? *
2. Can it fall within fair use? *
3. Can you get permission? *
4. Can you find alternate material? *

* ask for help from a copyright adviser.
Steps for evaluating use:

(Stop if "yes" to any)

1. Is there a zero risk alternative? *
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∗ ask for help from a copyright adviser.
Zero risk situations: the Public Domain

Uncopyrightable:
- Facts and data
- Processes and systems
- National government works

Expired:
- US works before 1923
- US works before 1977 w/o notice
- Author dead 70 years
Zero risk situations: Embedding & Linking

- Material on open web.
- Library databases.
Zero risk situations: Special Exceptions

First Sale Doctrine

- Distribution only. **Not Copying.**
Zero risk situations: Special Exceptions

Face-to-Face Teaching

- Performance and Display Only.
- Not Copying.

§ 110 (1)
Zero risk situations: Special Exceptions

Distance Education
(The TEACH Act)

- Use only for Face-to-Face Equivalent
- Post on the CMS w/ best practices.
- Only use what's needed
- Don't use education Stuff

§ 110 (2)
Scenario:

A faculty member wants to transcribe the entire text of F. Scott Fitzgerald's *This Side of Paradise* (1920) and upload it to an open class website as his own work?

How great is the risk?
Steps for evaluating use:

(Stop if "yes" to any)

1. Is there a zero risk alternative? *
2. Can it fall within Fair Use? *
3. Can you get permission? *
4. Can you find alternate material? *

* ask for help from a copyright adviser.
Calculating Risk:

Payoff VS (Cost of Suit) \times (Risk of Suit)
Assessing Risk: Fair Use

..for purposes such as criticism, comment, news reporting, teaching . . . scholarship, or research..

Four Factors:

1. Purpose and character of use
2. nature of copyrighted work
3. Amount of work used
4. Effect upon potential market
### 1st Factor: Purpose of Use

<table>
<thead>
<tr>
<th>Favors Fair Use</th>
<th>Doesn't Favor Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Transformative</td>
<td>• Commercial</td>
</tr>
<tr>
<td>• Non-profit</td>
<td>• Entertainment</td>
</tr>
<tr>
<td>• Educational</td>
<td>• For profit</td>
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<tr>
<td>• Research</td>
<td></td>
</tr>
<tr>
<td>• Scholarship</td>
<td></td>
</tr>
<tr>
<td>• Restricted Access</td>
<td></td>
</tr>
</tbody>
</table>

### Four Factors:

1. **Purpose and character of use**
2. **nature of copyrighted work**
3. **Amount of work used**
4. **Effect upon potential market**
2nd Factor: Nature of Work

<table>
<thead>
<tr>
<th>Favors Fair Use</th>
<th>Doesn't Favor Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>● Factual</td>
<td>● Creative</td>
</tr>
<tr>
<td>● Published</td>
<td>● Entertainment</td>
</tr>
<tr>
<td></td>
<td>● Consumable (workbooks)</td>
</tr>
</tbody>
</table>

Four Factors:

1. Purpose and character of use
2. nature of copyrighted work
3. Amount of work used
4. Effect upon potential market
3rd Factor: Amount Used

Favors Fair Use
- Small amount
- Only what's needed for educational use.

Doesn't Favor Fair Use
- The entire work
- The "heart" of the work

Four Factors:
1. Purpose and character of use
2. Nature of copyrighted work
3. Amount of work used
4. Effect upon potential market
4th Factor: Effect on Market

Favors Fair Use
- Lawfully acquired copy
- Limited market effect

Doesn't Favor Fair Use
- Replaces a sale
- Impairs market for work

Four Factors:
1. Purpose and character of use
2. Nature of copyrighted work
3. Amount of work used
4. Effect upon potential market
A Note about licensing:

Licenses supersede Fair Use.
Scenario:

A faculty member wants to rip a 3 minute scene from the documentary *When we were Kings* (1996) and upload it in Flash format to her Angel course. The clip is intended to illustrate oppression by the Mobutu regime.

How Great is the Risk?

Four Factors:

1. Purpose and character of use
2. Nature of copyrighted work
3. Amount of work used
4. Effect upon potential market
Scenario:

A faculty member wants to transcribe the lessons from the *French in Action* workbook and create digital versions in for his Angel course. No digital version of the workbook is available.

How Great is the Risk?

Four Factors:

1. Purpose and character of use
2. nature of copyrighted work
3. Amount of work used
4. Effect upon potential market
Steps for evaluating use:

(Stop if "yes" to any)

1. Is there a zero risk alternative? *
2. Can it fall within Fair Use? *
3. Can you get permission? *
4. Can you find alternate material? *

* ask for help from a copyright adviser.
Asking Permission

Three things to remember:

1. Ask the right person.
Asking Permission

Three things to remember:

2. Owner can't be found
   =
   Lower risk of suit, not favorable ruling.
Asking Permission

Three things to remember:

3. Keep a paper trail*

*(and ask for help drafting a formal release if high risk)
Steps for evaluating use:

(Stop if "yes" to any)

1. Is there a zero risk alternative? *
2. Can it fall within Fair Use? *
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※ ask for help from a copyright adviser.
Tips for finding alternate material:

Example Librarian
Questions?

Scenarios from your experience?
Scenario 1:

A faculty member finds a table of statistical formulas in a review copy of an online textbook and wants to transcribe the table for use in an online course.

How Great is the Risk?
Scenario 2:

You have scanned an advertisement from a recent issue of Time magazine and placed it on your course's Blackboard site for your students to interpret and critique.

How Great is the Risk?
Scenario 3:

You have scanned a book written by one of your colleagues at another university. She has given you written permission to post the work on your personal website.

How Great is the Risk?
Scenario 4:

Your intended use falls outside of any copyright exemptions, so you contact the publisher for permission. However, the publisher has merged with another and your e-mails and letters have been ignored. You decide to upload the material anyway.

How Great is the Risk?
Scenario 5:

A recent in-class discussion revealed your students' ignorance of the Prince catalog. In response, you embed a bootleg YouTube video of Prince's *Rasberry Beret* in your Angel course for students to listen to.

How Great is the Risk?
Scenario 6:

A faculty member has asked the IT department to digitize a 7 minute scene from the film *Hoop Dreams* and add annotations about documentary filmmaking techniques. They then want to upload the scene to Angel for distance education.

**How Great is the Risk?**