

Using Technology in Teaching Conference 2003

Copyright Issues for Faculty

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Topics for Presentation

- I. Basics of Copyright Law
- II. Fair Use & Other Exemptions
- III. Ownership Issues for Faculty

I. Basics of Copyright Law

- A. Sources of Copyright Law
- B. What is Copyrightable?
- C. Two Requirements for Copyright
- D. Categories of Copyrightable Material
- E. Items Not Copyrightable
- F. Creation of Copyrights
- G. Ownership & Duration
- H. Exclusive Rights of Copyright Owner

Section I (A)

Sources of Copyright Law

- U.S. Constitution – Article I – Section 8

The Congress shall have Power...To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings & Discoveries

- Copyright Act of 1976, as amended

- Effective January 1, 1978
- Title 17 of the United States Code

- U.S. Copyright Office at Library of Congress

Section I (B)

What is Copyrightable?

Title 17, United States Code, Section 102

Original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device

Section I (C)

Two Requirements for Copyright

- Originality
 - Does not have to be novel or unique
 - Does not need to have artistic merit or value
 - Expression is what is being protected, not ideas, concepts, or principles
- Fixation
 - Any tangible medium will do – paper, sound recording, video recording, computer file
 - Choreography, musical composition, or extemporaneous speech not fixed in some way is not copyrightable

Section I (D)

Categories of Copyrightable Materials

- Literary works (includes computer programs)
- Musical works
- Dramatic Works
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Motion pictures and other audiovisual works
- Sound recordings
- Architectural works

Section I (E)

Items Not Copyrightable

- Facts - Historical, Current Events, or even Biographical facts
- Ideas, procedures, processes, systems, methods of operation, concepts, principles, or discoveries
- Titles, short phrases, slogans, or names
- However – trademark, patent, or trade secret laws may be used for some of the above items

Section I (E) Continued:

Additional Items Not Copyrightable

- Works of the United States Government
- Judicial Decisions & Statutes of state governments
- Works consisting of common property such as calendars, tables of measurements, sport schedules, and the like

Section I (F)

Creation of the Copyright

- Copyright is automatic with the creation of the work of authorship
- Copyright registration is not required, unless person is filing a lawsuit for copyright infringement
- Copyright Notice is no longer legally required for a copyright
 - BUT HIGHLY RECOMMENDED
- Publication is not required as long as fixed in a tangible medium

Ownership & Duration of Copyright

- Author of the work is deemed the owner of the copyright, unless
 - Work-made-for hire rules apply (covered later)
 - Ownership has been transferred by written document
- Duration of Copyright
 - Author ownership – life of the author plus 70 years
 - Work-made-for-hire - 95 years from publication or 120 years from creation, whichever is shorter

Section I (H)

Exclusive Rights of Copyright Owner

1. Right of reproduction in copies
2. Right to prepare derivative works
3. Right to distribute copies
4. Right to perform work publicly
5. Right to display work publicly

Section II

Fair Use and Other Exemptions

- A. In General
- B. Copyright Law Fair Use Provision
- C. Four factors to determine Fair Use
- D. Guidelines for Fair Use
- E. Exemption for Performances and Displays of Copyrighted Material
- F. Face to Face Teaching Exemption
- G. Distance Learning Exemption
- H. Conditions for Distance Learning Exemption Under TEACH Act

Section II (A)

Exemptions in General

- Despite the exclusive rights given to the copyright owner under the law, there are certain exemptions from this exclusivity that pertain to teaching.
- Section 107 of the Copyright Law deals with Fair Use in the reproduction of copyrighted material
- Section 110 deals with an exemption for performance and display of copyrighted material in teaching situations

Section II (B)

Fair Use of Copyrighted Materials

Section 107 of Title 17 of the United States Code provides:

“the fair use of a copyrighted work, including such use by reproduction..., for purposes of criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.”

Section II (C)

Four Factors in Determining Fair Use

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes
2. The nature of the copyrighted work
3. The amount and substantially of the portion used in relation to the copyrighted work as a whole, and
4. The effect of the use upon the potential market for and value of the copyrighted work.

Section II (D)

Guidelines for Fair Use

- Guidelines For Classroom Copying placed in the 1976 House of Representatives Committee Report
- Guidelines for Educational Use of Music placed in the 1976 House of Representatives Committee report
- Guidelines for Classroom Use of Off-Air Videotapes – 1981 Congressional Record
- American Library Association Model Policy – 1982

Section II (E)

Exemptions for Performance and Display of Copyrighted Materials

- Section 110 (1) allows performance or display of a work by teachers or students in the course of face-to-face teaching activities of a nonprofit educational institution
- Section 110(2) amended November 2002 allows an exemption for performance and display in distance learning situations.

Face to Face Teaching Exemption

- No limits on what can be performed (show or play) or displayed (show) so long as copies used are lawfully obtained or made
- Can be used for display of art works, playing of movies, performance or playing of music and the like
- Exemption can be used in conjunction with “Fair Use”

Section II (G)

Distance Learning Exemption

- Technology, Education, and Copyright Harmonization Act (TEACH Act) became effective in November 2002
- Allows performance or display of non-dramatic literary and musical materials
- Allows performance and display of “reasonable and limited portions” of dramatic literary and musical materials

Conditions for Distance Learning Exemption Under TEACH Act

- College must have policy on copyright use, and provide information to faculty, staff, and students
- Copyright notices must be transmitted
- Technology must be used to prevent recipients from retaining work and further distributing them
- Access must be limited to enrolled students
- TEACH Act covers materials that a teacher would show or play during class, and does not cover materials for students to study, read, listen to or watch on their own outside class time.

Section III

Ownership Issues for Faculty

- A. Work-Made-For Hire Definitions
- B. Employee Provision of Copyright law
- C. Scope of Employment Criteria
- D. Professor's Exception ?
- E. Question - Are Faculty Works within Scope of Employment?
- F. Specially Commissioned Works
- G. Intellectual Property Policies
- H. Excerpts from Section 4.5 on Copyright

Section III (A)

Work-Made-For Hire Definitions

- Section 101 provides definitions of work-made-for hire in two different circumstances
- Work prepared by employee within the scope of his or her employment
- Work specially ordered or commissioned ... if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire

Section III (B)

Employee Provision of Copyright Law

Title 17 United States Code, Section 201

“In case of a work made for hire, the employer ... is considered the author of the work for purposes of this title, and, unless the parties have agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.”

Section III (C)

Scope of Employment Criteria

- Works prepared by employee not a work made for hire unless within scope of employment
- Factors used to determine scope of employment include:
 - Work produced on employer's time
 - Employer paid for materials and equipment
 - Work produced at employer's place of business
 - Employer had right to supervise manner in which work was created
 - Employer instigated creation of the work

Professor's Exception?

- Two cases decided prior to 1976 Copyright Law set out a so-called Professor's Exception from work made for hire rules
- 1976 Copyright Law and legislative history do not mention this exception
- Some legal commentators and one federal court since 1976 has questioned the existence of Professor's exception

Question – Are Faculty Works within Scope of Employment?

- Faculty time outside of teaching and office hours is flexible
- Faculty may produce all or part of work outside of college or university
- Employer controls production only indirectly, for example, at URI where publication is needed for promotion
- Employer instigates work only indirectly

Specially Commissioned Works

- This section of “work-made-for-hire” rules for specially commissioned works can affect faculty receiving grants, stipends, etc.
- These works are not works made for hire unless there is a written agreement that they will be a work made for hire

Intellectual Property Policies

- URI has an Intellectual Property Policy that recognizes copyright ownership of faculty in certain cases
- CCRI has a very similar Intellectual Property Policy (approved by the Board of Governors on March 24, 2008)
- Section 4.5 of policies covers Copyrights

Excerpt from Section 4.5 of the Intellectual Property Policy

“Lecture notes, articles, books, art and music works and other publications created by faculty members are not considered within the Scope of Employment for purposes of this policy unless there is a specific written agreement between CCRI and the faculty member, which agreement provides that a specific publication will be considered a "work-for-hire.”

See next slide for exception to above rule

Section 4.5 of the Intellectual Property Policy Continued:

“Course and program descriptions, course justifications, student learning outcomes, course syllabi, and any other curriculum materials submitted by any CCRI faculty member or staff member to the college’s Curriculum Review Committee for approval of a course, degree or certificate program, or other course of study shall be considered a *work-for-hire* and within the *Scope of Employment* of any such faculty member or staff member. The copyright in such curriculum material shall belong to RIBGHE.”