

Some Layperson's Thoughts on Copyright Law

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Disclaimer: This author of this article is not an attorney. Therefore nothing in the article should be construed as legal advice. The article was written to raise awareness of some copyright issues. For official advice, contact the ECU university attorney.

Who among us hasn't downloaded some particularly apt article or graphic or sound bite or video clip from the internet and included it in our presentation to a class? Even episodes of popular TV shows can often demonstrate some concept or idea that we would like to get across to our students. Making use of these sorts of materials marks a teacher who is willing to search non-traditional resources in an effort to engage the students' interest. Typically, the students benefit from such a teacher who goes the extra mile like this.

But, as Darth Vader found out, there is a Dark Side of the universe. Have you ever heard of the U. S. Copyright Law? "Bah, humbug," you say. "We're an educational institution. Copyright law doesn't apply to us."

That kind of thinking can get you in trouble. Copyright law applies to everybody. **Except as provided in the copyright law itself, no one can infringe on the rights of a copyright holder.**

Fortunately for people who want to use copyrighted material, the law places some fairly strong limitations on some of the exclusive rights of copyright holders. One of the limitations that many of us rely on is the Fair Use doctrine. This is described in Section 107 of the copyright law. Other limitations are described throughout the document (and it's an imposing document; 326 pages of text in PDF form).

One of the issues we in the Office of Educational Technology (OET) deal with regularly involves faculty including popular TV show episodes or Hollywood movies into their Mediasite recordings of their classes. Technically, this is a very easy thing to do; when a class is being recorded, just play the video for the in-class students and it will be automatically recorded and posted for the distance students. But there's a "gotcha" in this. Not only will you (and me, as content manager) be making an unauthorized copy of copyrighted material, but we will be transmitting that copy over a digital network.

This scenario is really interesting because it simultaneously impacts two parts of the copyright law. Section 110 of the law describes what a teacher or pupil can do with respect to showing a film (video) to both a face-to-face session in a classroom and to transmit this film via "digital transmission" to distance students. Within the framework of the law, these two scenarios are vastly different.

The first paragraph of Section 110 allows showing a copyrighted movie to a class as long as the copy being shown was created legally. However, the second paragraph (and related sub-paragraphs) of Section 110 place many restrictions on transmitting this movie to distance students. The following points are representative of these restrictions.

- The amount of the work used must be restricted. (This is also a feature of Fair Use.)
- The material must be directly related to the subject matter.
- The teacher must supervise the transmission.

- To the extent possible, the transmission must be technologically limited to persons enrolled in the course.
- The recipients must be informed that the material is copyrighted.
- The work must be streamed, not downloaded, to the recipients.
- The recipients must be told that they cannot further disseminate the work.
- The recipients must not engage in any activity that would interfere with the technological measures used to protect the copyright holders' intellectual property.

In this whole list, I think the thing that causes the most trouble is the restriction on the amount of material used. You can show the whole movie, episode, etc. in class but you cannot transmit the whole thing over a network. Clearly, the key to this is to select a short clip from your video that contains the concept you're trying to get across and show that clip to the in-class students; then, of course that same clip will be viewable by the distance students.

Some other items on the list are implemented automatically by the environment.

For example, Mediasite and Blackboard make sure only enrolled students can see the material (unless, of course, your students give their Pirate ID to someone else). Also, Mediasite is designed so that videos can only be streamed, not downloaded. For videos shown outside the Mediasite/Blackboard environments, the Laupus Library will put them on a streaming-only server and you can give the students the link to it. But beware: if you load a video directly into your Blackboard course, it is NOT protected from downloading. So don't do that.

It's up to you to make sure the copyrighted material you use is germane to your topic. Also, you should, in your syllabus, inform the students that some of the material they receive in the video may be copyrighted and that they are not allowed to share it with others or to try to defeat any protection methods that may be in use.

Strategy

So what is a strategy for dealing with copyright issues from the user of materials standpoint? Think of these points:

- If you (or ECU) own the copyright to the materials, there is no copyright issue. You may use the materials in any way you see fit.
- If you don't own the copyright to the material, consider getting permission to use it from the legal copyright holder. This can take some time and may not be practical in all cases, but it does relieve you from having to deal further with copyright issues. The library (Laupus or Joyner) and the Student Bookstore can help with this. If you can't justify fair use or some other rights limitation, this is your only path to use of the material.
- If you don't own the material and you don't have permission to use the material, you must look to copyright law for exclusion of rights that allow use. Make a "Fair Use" analysis and be sure it weighs in favor of fair use. But remember, fair use is not ironclad. Amount of material used is a major player in fair use. Use as little copyrighted material as possible.
- If you're going to put the material online, read carefully Section 110 of the copyright law and make sure you've covered all the bases there. And again, like fair use, use as little copyrighted material as possible.

Home Grown Video

If there is a video that illustrates a point you want to make but you think that there are too many copyright roadblocks to use it, why not let OET make a similar video. We can use faculty and student volunteers as actors. We can craft the storyline to make exactly the points you want to emphasize. Then, ECU and you will own the copyright and you will not have to mess with copyright law.

For some more information, try these web sites:

- www.copyright.gov This is the web site for the U.S. Copyright office.
- <http://www.copyright.gov/title17/92chap1.html#110> – Limitations on copyright owners rights for certain performances and displays
- <http://www.copyright.gov/title17/92chap1.html#107> and <http://www.copyright.gov/fls/fl102.html> - Fair Use doctrine
- <http://www.ecu.edu/cs-itcs/copyright.cfm> - ECU's policies on copyright

I'll be glad to discuss any of this face-to-face. Just remember, I am not a lawyer and cannot give legal advice.