An Introduction to DMCA and Fair Use for Educators

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• Ph.D., Analytical Chemistry, University of Florida
• Trained in intellectual property (IP) management and technology transfer;
• Manage Florida Tech’s IP portfolio:
  – Determine IP ownership and execute Assignment Agreements (AAs);
  – Assist IP counsel and faculty with patent prior art and prosecution;
  – Conduct compliance with reporting under Federal Bayh-Dole Act:
• Assist in negotiating tech transfer agreements including:
  – Inter-Institutional Agreements (IIAs)
  – Material Transfer Agreements (MTAs)
  – Research Agreements (RAs), Memorandums of Understanding (MOUs)
  – Option and Licensing Agreements
  – Non-disclosure Agreements (NDAs) a.k.a. Confidentiality Agreements (CDAs)
Key US Laws

- **Copyright Act**: US Code Title 17 – first enacted 1790 and last major amendment in 1976;

- **Digital Millennium Copyright Act (DMCA)** - Statutory provision Pub. L. No. 105-304, 112 Stat. 2860 (Oct. 28, 1998);

- **Technology, Education and Copyright Harmonization Act (TEACH)** - Subtitle C of Title III of H.R. 2215 (Nov. 3, 2002).

Article I, Section 8, Clause 8 of the U. S. Constitution: authors granted exclusive rights to their works for a limited time

DMCA harmonizes Title 17 with international copyright practices AND addresses digital copyright issues

TEACH defines what uses are permissible in distance education
US Copyright

• Copyright law, protects original works of authorship cast into a tangible form, including:
  – literary, dramatic, musical, and artistic works, such as poetry, novels, movies, songs, computer software, and architecture.

• Copyright does not protect:
  – facts, ideas, systems, or methods of operation, although it may protect the way these things are expressed.

• Five main copyrights allow authors to prevent others, for a limited time, from:
  – copying, distributing (selling), making derivative works, publicly displaying, or publically performing their works.
Fair Use

• A principle based on the belief that the public is entitled to freely use portions of copyrighted materials for commentary and criticism.

• Consider four factors when applying fair use:
  – What is the purpose of the use?
  – What is the nature of the copyrighted work?
  – What amount of the work will be used?
  – Are there any monetary consequences to the author or market?

• Fair use is an interpretation - often left to the courts - and can differ [individuals, companies], [educators, and libraries].
Digital Millennium Copyright Act of 1998 (DMCA)

• Comprehensive revision of 1976 Copyright Act and implements two World Intellectual Property Organization (WIPO) treaties;

• Comprised of 6 Titles:
  – **Title I**, “WIPO Copyright and Performances and Phonograms
    • Treaties Implementation Act of 1998,” implements the WIPO treaties
  – **Title II**, “Online Copyright Infringement Liability Limitation Act
    • creates limitations on the liability of online service providers for copyright infringement when engaging in certain types of activities.
  – **Title III**, “Computer Maintenance Competition Assurance Act
    • creates an exemption for making a copy of a computer program by activating a computer for purposes of maintenance or repair.
  – **Title IV** contains six miscellaneous provisions, relating to the functions of:
    • the Copyright Office, **distance education**, the exceptions for **libraries** and for making ephemeral recordings, **webcasting of sound recordings**, and the applicability of collective bargaining agreement obligations in the case of transfers of rights in motion pictures.
  – **Title V**, the “Vessel Hull Design Protection Act,”
    • creates a new form of protection for the design of vessel hulls.
DMCA - continued

- Targets unauthorized sharing of digital materials;

- (Infamous) DMCA take-down notices issued to service providers by copyright holders claiming infringement;

- Limits liability of service providers if they take certain actions, including:
  - **Register an agent** with the Copyright Office;
  - Have a current **internet users’ policy** in place;
  - **On-going education** of providers internet users about copyright requirements, including obtaining permissions;

Florida Tech – and all universities – are service providers

Eric Kledzik, VP for IT is our DMCA registered agent

Policy 5557 Jan. 1, 2015
IT-1006 Policy on DMCA

Policy 1448 Apr. 14, 2007
IT-i9001 – DMCA Consultations
Technology, Education and Copyright Harmonization Act of 2002 (TEACH)

- Applies only to non-profit, accredited educational institutions that are compliant with DMCA;
- Grew out of limitations placed on distance education under DMCA;
- TEACH requirements for use of materials:
  - Access is restricted to students enrolled in class;
  - Must be used in the same manner as in a face-to-face class;
  - Only essential portions of material should be used;
  - Materials must have been lawfully acquired;
  - Students must be notified that materials are copyrighted;
  - May digitize materials only if digital versions are not already available.
Educator Fair Use Guidelines*

- **Create your own content**;

- **Get permission** from the copyright holder;

- **Provide links** to a work, rather than copying the work itself;
  - Use a top-level link, i.e. avoid deeply embedded materials;
  - Ensure that the site is a legitimate source, i.e. it has the authority to host or post content;

- **Make an attribution** to the original source;

- **Use public domain works**, i.e.:
  - Works with expired copyrights;
  - Government documents;
  - Open access or licensed under Creative Commons.

*These are guidelines only and are not definitive.*
Educator Fair Use Guidelines* - continued

- **Apply the 10% rule** when using other author’s works:
  - i.e., if using a 2500 word document, use 250 words; if using a 60 minute video, use 6 minutes, etc.;

- **Use content from a published source:**
  - E.g. from a published book, as opposed to a website

- **Break it up:**
  - Intermingle portions of the work with commentary/discussion;

- **Encourage student to purchase the book/article;**

*These are guidelines only and are not definitive.*
• **Use low resolution images;**

• **Avoid using images for embellishment purposes only;**

• **Extra discretion required when using films, videos or music recordings:**
  – Avoid popular films, videos and music, but if required, secure a license;
  – Use documentary education, historic, public domain or specially licensed works whenever possible;
  – Intermingle instructor comment when using significant content – do not use content longer than what is required to make your point;
  – Provide links to the works and have students view it from the site

*These are guidelines only and are not definitive.*
Danger Zone Materials

• Only use when permission has been granted or where there is a “strong” fair use case:
  – Political cartoons
  – Getty images
  – Popular movies
  – Television shows
  – Popular songs
  – Trademarks
“Five Ways to Stay Out of Trouble”*

- Assume It’s Protected
- Read Click-Wrap Agreements
- Remove Unauthorized Material
- Investigate Claims Promptly
- When in Doubt, Seek Permission

Sources

US Copyright Law
- https://www.copyright.gov/title17/

DMCA

1998 Conference on Fair Use (all 197 pages)

Reproduction of Copyright Works for Educators and Librarians

Getting Permissions and Guidelines
- Fruin, Christine, http://ufdc.ufl.edu/AA00007596/00004

Publishers’ Copyright Licenses
- http://www.sherpa.ac.uk/romeo/index.php