



Florida Institute of Technology
High Tech with a Human Touch™

An Introduction to DMCA and Fair Use for Educators

Cecilia Basic, Ph.D.
Research Office



Cecilia Basic, Ph.D. - IP Specialist

- 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



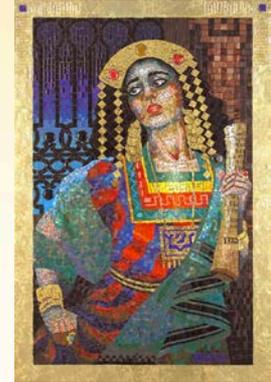
US Copyright

- 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].



Queen Esther Mosaics
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<http://www.lilianbroca.com/queen-esther-mosaics>



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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.***



Educator Fair Use Guidelines* - continued

- 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

*from Stim, Richard, “Getting Permission: Using and Licensing Copyright-Protected Materials Online and Off, 6th ed., Nolo, Berkeley, CA, 2016, p. 211.



Sources

US Copyright Law

- <https://www.copyright.gov/title17/>

DMCA

- <https://www.copyright.gov/legislation/dmca.pdf>

1998 Conference on Fair Use (all 197 pages)

- https://www.uspto.gov/sites/default/files/documents/confurep_0.pdf

Reproduction of Copyright Works for Educators and Librarians

- <https://www.copyright.gov/circs/circ21.pdf>

Getting Permissions and Guidelines

- Stim, Richard, "Getting Permission: Using and Licensing Copyright-Protected Materials Online and Off, 6th ed., Nolo, Berkeley, CA, 2016.
- Fruin, Christine, <http://ufdc.ufl.edu/AA00007596/00004>

Publishers' Copyright Licenses

- <http://www.sherpa.ac.uk/romeo/index.php>