Is it a fair use?

A Hands-On Discussion

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Scale image credit: CC0 public domain image, by OpenClips, via Pixabay:
Session Goals

After this session, participants will:

- Be familiar with U.S. Copyrights
- Be able to identify when and how to evaluate a use as a ‘Fair Use’
- Have experience using tools and resources for applying a Fair Use analysis

NOTE: This workshop’s purpose is to provide information, resources, and facilitate discussion. It should not be construed as legal advice.
Session Activities

- U.S. Copyright overview
- 5-step evaluation process
- Fair Use Evaluator Tool
- Group activity: case study analysis
- Discussion
What is Copyright?

"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 and Discoveries."

U.S. Constitution, I S8

Copyright Definition
Copyright FAQ - U.S. Copyright Office
Copyright Basics

Copyright holder’s **exclusive** rights for life + 70 years

- Reproduce the work
- Distribute the work
- Publicly perform the work
- Publicly display the work
- Publicly perform sound recordings by means of a digital audio transmission
- Create derivative works

© Screenshot from “Get Creative” Creative Commons [CC BY-NC-SA](https://creativecommons.org/licenses/by-nc-sa/4.0/)
You may want to (legally) …

• Reproduce
• Distribute
• Publicly perform
• Publicly display
• Publicly perform by means of a digital audio transmission, and/or
• Create derivations of . . .

... works for which someone else owns copyright
5 Steps

1) Is the work protected by copyright?

2) Is there a specific exemption in © law that covers my use?

3) Is there a license that covers my use?

4) Is my use covered by fair use?

5) Do I need permission from the copyright owner for my use?

A Framework for Analyzing any U.S. Copyright Problem.
Modified by Anita Walz, CC-BY-SA 4.0.
Copyright Basics

Works that can be copyrighted:

- Literary works, musical, and dramatic works
- Pantomime & choreographical works
- Pictorial, graphic and sculptural works
- Sound recordings
- Motion pictures and other audiovisual works
- Computer programs
- Architectural works

Works that cannot be copyrighted:

- Ideas, procedures, and methods
- Titles, names, slogans (may be trademarked)
- Facts, news, and research data
- Works in the public domain [http://librarycopyright.net/resources/digitalslider](http://librarycopyright.net/resources/digitalslider)
- Unrecorded, unwritten, un“fixed” works
Step 1: Is the work protected by copyright?

No - it’s a type of work that cannot be copyrighted
No - it’s in the Public Domain
http://librarycopyright.net/resources/digitalslider
No - it’s my original work -- and I did not sell or give away my rights

Yes, it is protected by copyright - See Step 2
5 Steps

1) Is the work protected by copyright?

2) **Is there a specific exemption in © law that covers my use?**

3) Is there a license that covers my use?

4) Is my use covered by fair use?

5) Do I need permission from the copyright owner for my use?

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Step 2: Is there a specific exemption in © law that covers my use?
Examples of exemptions related to research and teaching

Section 108: Library copying
Section 109(a): First sale doctrine
Section 109(c): Exemption for public displays

**Section 110(1): Displays/performances in face to face teaching**

**Section 110(2): Displays/performances in distance learning**

Section 117: Computer software
Section 120: Architectural works
Section 121: Special formats for persons who are blind or have other disabilities

Persistent Links to library resources:
http://www.lib.vt.edu/help/scholar/persistentlinks.html

Know Your Copyrights chart:

Also valuable:
Documentation of the exemption you used -- that you acted “in good faith.”
5 Steps

1) Is the work protected by copyright?
2) Is there a specific exemption in © law that covers my use?
3) Is there a license that covers my use?
4) Is my use covered by fair use?
5) Do I need permission from the copyright owner for my use?

A Framework for Analyzing any U.S. Copyright Problem.
Modified by Anita Walz, CC-BY-SA 4.0.
3) Is there a license that covers my Use?

Screenshots taken from pages on lib.vt.edu, using Snippy screenshot tool and image editor, by Anita Walz.
3) Is there a license that covers my Use? (or, could I use alternate material that has a Creative Commons license?)

Creative Commons Licenses

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CC licence logos from Creative Commons site, [About Creative Commons Licences](https://creativecommons.org)
5 Steps

1) Is the work protected by copyright?

2) Is there a specific exemption in © law that covers my use?

3) Is there a license that covers my use?

4) Is my use covered by fair use?

5) Do I need permission from the copyright owner for my use?

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Fair Use: 4 Factors

1) The purpose and character of your use
2) The nature of the copyrighted work
3) The amount and substantiality of the portion taken
4) The effect upon the potential market
Fair Use Evaluator Tool

How It Works

1. Getting Started:
   - Provide contextual information about your intended use
   - Describe how your intended use relates to each of the four fair use factors
   - Indicate how "fair" you feel your use is for each of the factors (based on the description & criteria you have provided)

2. The Fair Use Evaluator:
   - Saves your entries and issue a color coded "fairness" result, showing the average for the evaluations you provided

3. Provide Additional Information: [Optional]
   - Add any other mitigating circumstances or information that you feel is important (or, if you determine your use is not fair, exit the tool)

4. Get a Hard or Electronic Copy:
   - The Fair Use Evaluator will collate and publish a time-stamped PDF of your "Fair Use Evaluation" (using the information you've provided).

5. How to Use your Analysis:
   - Share your analysis with colleagues, a librarian, or a copyright specialist for comment or to validate your results.
   - Keep a copy for your files

Click here to see our [statement of privacy]
Click here to learn how to [modify this tool for use at your own institution]

Local Copyright Information
© 2008 Michael Brewer & ALA Office for Information Technology Policy

CC-BY-NC-SA license
Case Study Example

Dr. R is planning to teach a class on film that will include watching films, reading and writing film criticism, and a student assignment to make a short film individually or with a small group. One student plans to use an entire copyrighted song from a popular group in the background and plans to upload her completed film to YouTube as well. Is the student’s use of the song a fair use?

Modified from a “Scenario for Copyright Framework Analysis,” from Coursera hosted MOOC, Copyright for Educators & Librarians, taught by Kevin Smith, M.L.S., J.D., Lisa A. Macklin, J.D., M.L.S., Anne Gilliland, JD, MLS: https://d396qusza40orc.cloudfront.net/cfel/Reading%20Docs/MOOCFinal.pdf

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Ms. R, an academic librarian, is planning to provide a training session for college instructors on library ebook platforms. To catch people’s interest she wants to start the session with a clip of Pharrell William’s song “Happy” to get everyone in a good mood. To be sure it’ll work in any teaching environment she downloads the song file to her computer, and embeds the file in her PPT presentation. Later a participant asks if she can share her slides and she says she’ll post them to SlideShare.
Case Study Group Activity

2 Groups

1) Open Group Case Study Document
   • Choose Group Recorder & Reporter
   • Open Fair Use Evaluator Tool

2) Analyze your case study for Fair Use applicability
   • Record your analysis in the Fair Use Evaluator tool and create a PDF
   • Have the PDF at hand for our full group discussion
Discussion
5 Steps

1) Is the work protected by copyright?

2) Is there a specific exemption in © law that covers my use?

3) Is there a license that covers my use?

4) Is my use covered by fair use?

5) Do I need permission from the copyright owner for my use?

6) Can I identify alternative content or create my own content to use?

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5) Do I need permission from the copyright owner for my use?

Resources for Getting Permission

How to Obtain Permission - a circular from the U.S. Copyright Office
http://www.copyright.gov/circs/m10.pdf

The Basics of Getting Permission, from Stanford University
http://fairuse.stanford.edu/overview/introduction/getting-permission/
6) Can I identify alternative content or create my own content to use?
Openly licensed Images

1) **Creative Commons Search** → Search via CC license on multiple content platforms (Flickr, Google, more)

2) **Flickr** → After you type in something to search, on the top left, use the ‘Any License’ dropdown to change to ‘All Creative Commons Licences’

3) **Wikimedia Commons** - openly licensed or public domain

4) **Pixabay** - all images are CC0 (public domain)

5) **Tin Eye** - *Do you have a picture you found online and aren’t sure of its license? Paste it in Tin Eye to find out where it’s from.*

6) Always **Attribute** when reusing Creative Commons works.
Copyright Definition
http://www.copyright.gov/help/faq/definitions.html

Copyright FAQ - U.S. Copyright Office
http://www.copyright.gov:8081/help/faq/

U.S. Copyright Office Records Search
http://www.copyright.gov/records/

Copyright Slider - Works in the Public Domain
http://librarycopyright.net/resources/digitalslider/

A Framework for Analyzing Any U.S. Copyright Problem
http://guides.lib.vt.edu/ld.php?content_id=9271483  modified by Anita Walz, CC-BY-SA 4.0
http://tinyurl.com/5-stepsForCopyrightQs  by Smith, K., Macklin, L. A., and Gillilan, A., CC-BY-SA 4.0

Fair Use Evaluator Tool
http://www.librarycopyright.net/resources/fairuse/howitworks.php

How to Obtain Permission - a circular from the U.S. Copyright Office
http://www.copyright.gov/circs/m10.pdf

The Basics of Getting Permission, from Stanford University
http://fairuse.stanford.edu/overview/introduction/getting-permission/

Creative Commons Search filter - a starting point for finding openly licensed content
https://search.creativecommons.org/

Scholarly Communications (and Copyright), University Libraries
http://scholar.lib.vt.edu/cgi-bin/comment.pl

Follow the Four Factors of Fair Use (video) http://youtu.be/mYB3f7U9NFs

Fair Use Case examples

- Webster University, Fair Use by Use: http://www.webster.edu/faculty/fair-use/use.html
- Stanford University, Summaries of Fair Use Cases: http://fairuse.stanford.edu/overview/fair-use/cases/
- Coursera hosted MOOC, Copyright for Educators & Librarians, taught by Kevin Smith, M.L.S., J.D., Lisa A. Macklin, J.D., M.L.S., Anne Gilliland, JD, MLS, Scenario for framework analysis: https://d396qusza40orc.cloudfront.net/cfel/Reading%20Docs/MOOCFinal.pdf  CC-BY-SA 4.0

Workshop Materials:
http://tinyurl.com/IsItAFairUse-Wrkshp-2016