

# Copyright & Fair use

As It Applies To Teaching

# Presentation outline

- Basics of U.S. Copyright Law
- Educational Exemption and Fair Use
- Use of Non-Coursepack Materials
- Academic Coursepacks



# Basics of U.S. Copyright Law

Copyright Act of 1976 (17 United States Code)

- Protects works
  - ✓ Original expressions
  - ✓ Tangible in nature
  - ✓ Published or unpublished
- Copyright exists upon creation of the work
  - Since 1989 copyright notice no longer required in U.S.
  - (© with year of first publication and name of copyright owner)
- Jurisdiction of U.S. copyright law
  - Applies to U.S. works and eligible foreign works being used in the U.S.



# Copyright Protection in U.S.

## Protected

- Literary works
- Musical works, including any accompanying words
- Dramatic works, including any accompanying music
- Pantomimes and choreographic works
- Works of visual art
- Motion pictures and other audiovisual works
- Sound recordings
- Architectural works



## Not protected

- Facts, ideas, procedures, processes, concepts, principles, etc.
- U.S. federal government works
- Works in public domain (works published before 1923)



# Copyright Owners & Exclusive Rights

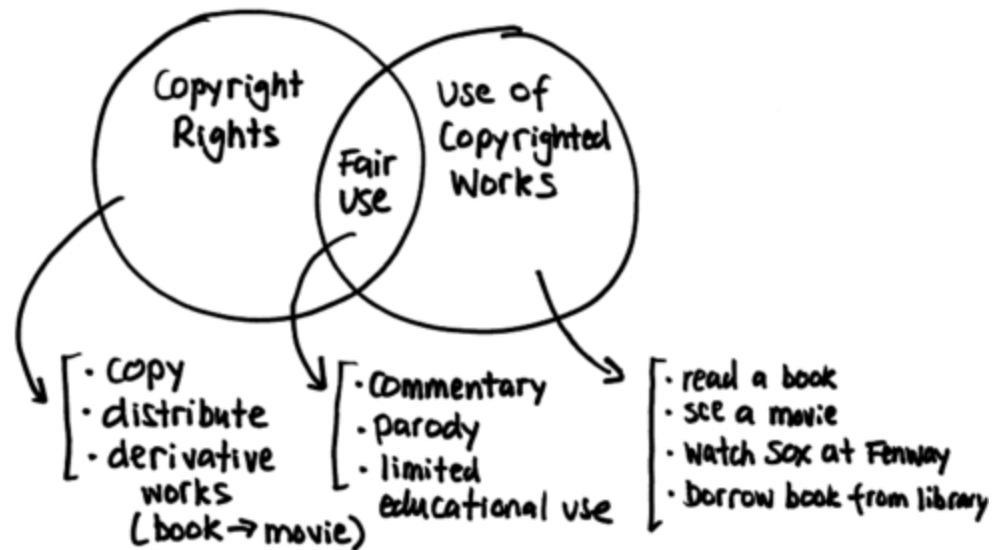
- Copyright owned by initial authors, publisher, or employers for works made for hire
- Exclusive rights to
  - Reproduction
  - Preparing a derivative work
  - Public distribution
  - Public performance
  - Public display
  - Public performance in digital mediums



# Fair Use

Portions of a copyrighted work may be used without the author's permission for purposes such as:

- Criticism
- Commentary
- News reporting
- Teaching
- Research



# Four Factors

## 1. Purpose and character of the use

- Commercial



- Education & research
- Criticism and commentary
- News reporting
- Transformative use
- Non-commercial

## 2. Nature of copyright works (fact vs. imagination)

- Unpublished
- Imaginative
- Unique



- Published
- Factual
- Informational
- Non-fiction

# Four Fair Use Factors

## 3. Amount and substantiality of the source

- Large portion
- Borrowing from the heart of the work



- Small portion
- Borrowing from peripheral, non-essential portion

## 4. Effect on the potential market

Harm to publisher sales and profit



No effect on publisher sales and profit



# The Classroom Use Exemption

- U.S. copyright law allows for performance and display of works in face-to-face teaching at nonprofit educational institutions.



- Copying and/or distributing works regardless of student use or teaching purposes are not allowed.

# The TEACH Act

The TEACH (Technology, Education and Copyright Harmonization) Act of November 2002 allows use of works through digital networks in distance learning.

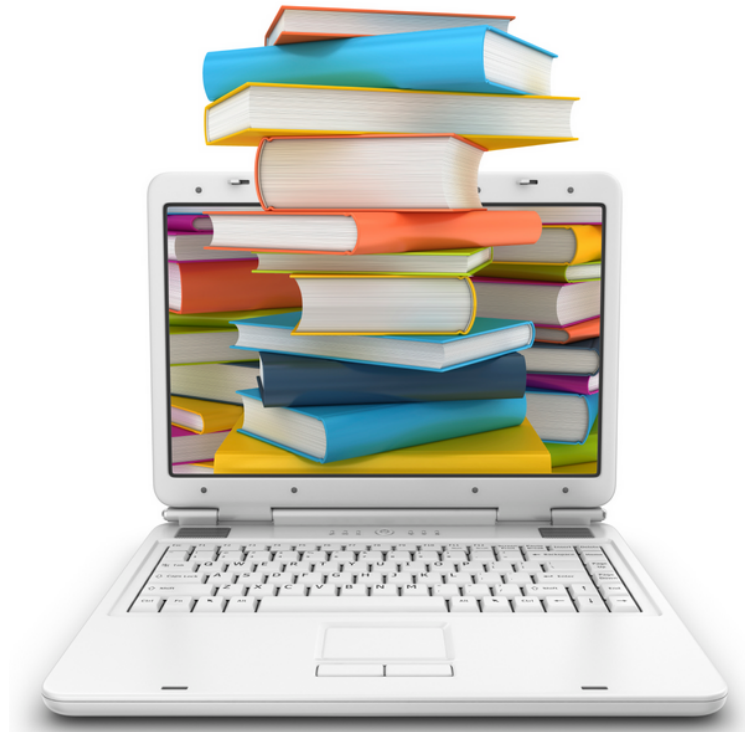


Requirement to implement TEACH Act:

Technical security measures must be made to prevent retention “beyond duration” of class session and unauthorized further dissemination

# Use of Non-Coursepack materials

- Print copies
- Web resources
- Reserves



# Single Copies for Class Preparation

- A single copy of a chapter from a book
- A single copy of an article from a periodical or newspaper
- A single of a short story, short essay, or short poem
- A chart, graph, diagram, picture or cartoon from a book, periodical or newspaper

# But do not:

- Create your own anthology or book from “pieces” gathered
- Copy from works that are “consumable” like workbooks, exercises, tests
- Substitute copying for purchasing
- Copy the same item from term to term

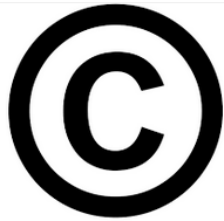
# Multiple copies for classroom use

- Can make only one copy for each student in the class
- Each item copied must be for classroom use or discussion
- Each copy must include a notice of copyright (it can be simple)
- Teachers must actually use the copies

# Three tests for copying

- Test 1: Brevity
  - Length and number of items
  - Less the better
- Test 2: Spontaneity
  - Instructor must initiate the making of multiple copies
  - The decision to copy must be close to the time of use. Otherwise, permission must be requested.
- Test 3: Cumulative Effect
  - Copying must be done for only one course.
  - There shall not be more than nine instances of such multiple copying for one course during one class term.

# Web Resources



Most content on the Internet is copyrighted.

Large amounts of documents, images, text, should not be taken without permission

If in doubt whether a particular use is covered by fair use, always contact the rights holder



Small portions can be used by teachers in class

Many web pages grant permissions to educators automatically

Linking to web resources



# Course Reserves

- Entire books, scores, and videos in their original formats owned by the library or instructor
- Instructor's notes, quizzes, tests, and other materials created for by the instructor
- Photocopies falling under fair use
- Copyrighted materials for which the instructor has obtained appropriate permission

# Reserves Limitations

- Copies of pages from intended to be “consumable”
  - Workbooks, exercises, standardized tests, etc.
- Copyrighted materials may be placed on reserve for one semester only without permission
- Permission from the copyright owner is required:
  - Same copyrighted materials for consecutive semesters
  - Copies of multiple articles from one issue of a journal or multiple chapters from a book during the same semester

# Academic Coursepacks



There is no such thing as “fair use” for coursepacks.

**kinko's**



- Most publishers grant “clearances” for use of their books or articles in coursepacks for a fee.
- Clearances normally last 1 semester.

# Building Coursepacks

- Works not protected by copyright, such as facts, government documents, and works in the public domain
- Works for which you have a license permitting you to make copies and assemble coursepacks
- For copyrighted materials, permissions must be obtained from the copyright owner

# Obtaining copyright permissions

1. Identify copyright holder
2. Contact copyright holder directly –or– a collective rights organization to negotiate permissions
3. Draft permissions letter
4. Negotiate permissions agreement, possibly involving fee
5. Obtain signed permissions agreement



!!! Lack of response does not substitute for permission !!!

# NDNU Bookstore

- XanEdu (Clearance Service)
  - Obtain required copyright clearances
  - Print coursepacks
  - Determine fees for coursepacks
- Faculty members are required
  - to fill out a XanEdu Order Form (available at the bookstore)
  - provide originals of the materials they wish to include in the coursepacks.
  - submit requests at least 8-10 weeks before the term begins