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Procedure, and Intellectual Property**

Important Copyright Topics at Minnesota State Colleges and Universities

Koffee with Karen Webinar

System Procedure 3.27.1 Copyright Clearance

The act of ensuring a proposed use of another person's materials complies with copyright law. Users are responsible for clearing the copyright for all materials before they use them.

Clearing Copyright:

- Determine if materials are or are not protected by copyright
- Use your own original materials
- Perform Fair Use Analysis with [Fair Use Checklist](#) to justify use
- Use in compliance with Sections 110 (1) & (2) of Copyright Act.
- Use materials available through an open or CC license
- Get permission (*letter, email, subscription, license, etc.*)
 - See www.minnstate.edu/system/asa/academicaffairs/policy/copyright/forms.html



Examples of Copyrightable Works

textbooks
workbooks
exams
quizzes
course materials
learning objects
online courses
software
photographs
paintings
films
movies

manuals
videos
novels
plays
illustrations
diagrams
drawings
designs
sketches
web pages
works of art
sculptures

articles
computer graphics
images
databases
songs
lyrics
music
audio recordings
YouTube videos
poems
instruction booklets
research papers

Categories of Copyright Works

1. Literary works;
2. Musical works, including any accompanying words
3. Dramatic works, including any accompanying music
4. Pantomimes and choreographic works
5. Pictorial, graphic, and sculptural works
6. Motion pictures and other audiovisual works
7. Sound recordings
8. Architectural works

Establishing a Copyright

Copyright Eligibility Requirements:

1. Fixation—the work exists in a medium from which the author’s expression can be read, seen, or heard, either directly or by the aid of a machine;
 2. Originality—the work owes its origin and independent creation to the author(s);
 3. Minimal creativity—the work is the product of at least a minimal level of creativity.
- When criteria are met, a copyright *arises automatically*.
 - For works that have significant value, the owner should register their copyright with the [U.S. Copyright Office](#).

Registering a Copyright

Register a copyright online at www.copyright.gov.

- \$35 fee
- Copyright protection last *life of the author plus 70 years for individuals*, or for corporations it's *95 years from publication or 120 years from creation*, whichever is shorter.
- Recommended for works with commercial value.

Advantages

- Access to federal courts to enforce copyright
- Statutory damages (\$750 to \$150,000 per infringement)
- Attorney fees for prevailing party 😊
- Big hammer for negotiations



Works NOT Protected by Copyright

- Works in the Public Domain (*expired copyright/donated work*)
- Federal Government Publications & website info.
- Works typically registered as a trademark:
 - Tag lines and slogans
 - Breakfast of Champions – Wheaties, 1930s
 - JUST DO IT – [Nike](#), 1988
 - GOT MILK – California Milk Processor Board, 1993
- Mathematical equations and formulas
- Recipes*
- Blank forms
- Phone books

A Copyright Holder's Exclusive Rights

1. To **make copies** of the work,
2. To **prepare derivative works** based upon the original work;
3. To **distribute copies**
4. To **perform** the work
5. To **display** the work

Remember these five rights as we progress through the presentation.

Legality v. Reality

A Copyright Holder's Tolerance

Legality

Activity may be copyright infringement from a legal point of view.

Reality

Infringement is de minimis, tolerated or ignored by the copyright holder for various reasons.

Linking to a copyright work online is a [Best Practice](#).

Limitations on Copyright

Non-Infringing uses of a copyrighted work (Source: Copyright Act of 1976)

1. Fair Use (§107)

> Using copyrighted works in face-to-face teaching, scholarship, research and other non-profit educational purposes.

2. Reproduction by Libraries and Archives (§108)

> Making a copy to replace a rare book that is damaged, deteriorating, lost, stolen or in an *obsolete format*. (Last VHS Player manufactured by Japan's Funai Electric - July 22, 2016)

> Making a copy of a copyrighted work for study, scholarship, or research for a student or faculty member.

3. Limitations on exclusive rights: Exemption of certain performances and displays (§110)

> Subd. (1) Face-to-Face Teaching

> Subd. (2) Hybrid / Online teaching (*The TEACH Act*)

Fair Use

Copyright Act § 107: Fair Use allows use of copyrighted materials without copyright owner's permission for:

- Criticism
- Comment
- News reporting
- Teaching (making multiple copies for classroom use, OERs, etc.)
- Scholarship
- Research

Fair Use of Copyrighted Works

“There are no legal rules permitting the use of a specific number of words, a certain number of musical notes, or percentage of a work. Whether a particular use qualifies as “fair use” depends on all the circumstances.” *U.S. Copyright Office.*

Four Factors to Consider

1. The **purpose and character** of the use, including whether such use is of a *commercial nature* or is for *nonprofit educational purposes*.
2. The **nature** of the copyrighted work (factual v. creative).
3. The **amount** and **substantiality of the portion** used in relation to the copyrighted work as a whole.
4. The **effect** of the use upon the **potential market** or **economic value** of the copyrighted work.

See the [Fair Use Checklist](#) on [IP Tools & Forms](#) website

Fair Use → Transformation

Transformation

1. Add/subtract from original
2. Use for different purpose



YouTube video player interface showing a search for "video game tutorial". The video content displays a first-person perspective of a player in a video game, aiming a rifle at several enemies in a dimly lit industrial setting. The video player includes a progress bar, volume control, and a play button. Below the video, the title "Top 10 Video Game Tutorial Sequences" is visible, along with the channel name "WatchMojo.com" and a subscriber count of 13,111,368. The view count is 993,182 views.

Fair Use → Parody

Songs - Using enough of the music and words where people recognize the song, but not enough for it to be copyright infringement. Musical parodies tend to be humorous, but can also be critical and satirical.



Memes - a humorous image, video, piece of text, etc., that is copied, modified and spread rapidly by Internet users.

Student's Use of Copyrighted Works

Students may:

- Use the entire copyrighted work (songs & music included) in their homework assignments and projects produced for non-profit educational purposes under Fair Use.
- Have their assignments viewed or heard by faculty members and other classmates.

Students may NOT:

- Display their homework assignments or projects in public (e.g. public website) unless the student has cleared the copyright to any non-original works used in their work (video, song, music, etc.).

Faculty/Student Use of Copyrighted Works

Copyright Act § 110(1) applies to Face-to-Face Teaching

- Physical/Tangible Classroom
 1. Copyright law allows any work lawfully acquired to be used.
 - “Used in the classroom” means playing a CD, DVD or digital file with electronic equipment **located in the classroom**, *displaying a picture or photo, reading a poem, students playing live music in the classroom.*
 - “Classroom” means traditional physical classroom or a similar location devoted to instruction (e.g. auditorium).
 - The entire amount of work may be used.
 - *Does not include making copies, OER Textbooks, or transmitting digital materials into the classroom from outside of it.*
 2. Cannot violate the terms of service, an agreement, etc.
- Licenses, Subscriptions, Terms of Service May Restrict Use
 - Redbox, Pandora, Spotify, iTunes, Netflix, etc.

Faculty/Student Use of Copyrighted Works (cont.)

Copyright Act § 110(2) applies to Hybrid/Online Teaching

- Online or Hybrid Courses (D2L implications)
 - Any work* *lawfully made and acquired* can be used online.
 - ***EXCEPTION**: Cannot be works that are produced or marketed primarily for instructional activities transmitted via digital networks.
 - One digital copy can be made and uploaded to D2L.
 - Entire performances of **nondramatic** literary and musical works (poems, songs, music, etc.).
 - Reasonable and limited portions of a **dramatic** musical or audiovisual works (musicals, movies, music videos, etc.).

See [TEACH Act checklist](#) on [IP Tools & Forms](#) webpage.

Personal Use v. Public Performance

Personal Use Rights

- The right to perform or display a copyrighted work (e.g. DVD movie) at a private place or place NOT open to the public where persons in the normal circle of a family and its social acquaintances are gathered.
- You buy a DVD movie at Target, it will have Personal Use Rights.
- Your Netflix Account along with other content streaming services provide personal use rights to the subscriber.

Public Performance or Educational Rights

- The right to perform movies in public settings or to audiences in private setting that are comprised of people outside of family and friends.
- You license a movie from Swank Motion Pictures, LLC.
<http://www.swank.com/>

Personal Use v. Public Performance

Section 101 of the Copyright Act states that a performance is “public” if it is:

1. in a “public place” or
2. in any place if "a substantial number of persons outside of a normal circle of a family and family acquaintances" is gathered there.

One must consider whether the place is public and the size and composition of the audience.

- **For example**, if the performance takes place in a place open to the public, how many and what kind of people attend is not important. *By definition it is a public performance.*
- If the public will be excluded, the size and composition of the audience determine if the performance will be public or personal.

Using Internet Photos/Videos/Materials

Google “Images” search engine results

- Assume they are copyrighted unless information on the website states otherwise.

What is your proposed use? You must justify it via Fair Use or another part of the Copyright Act.

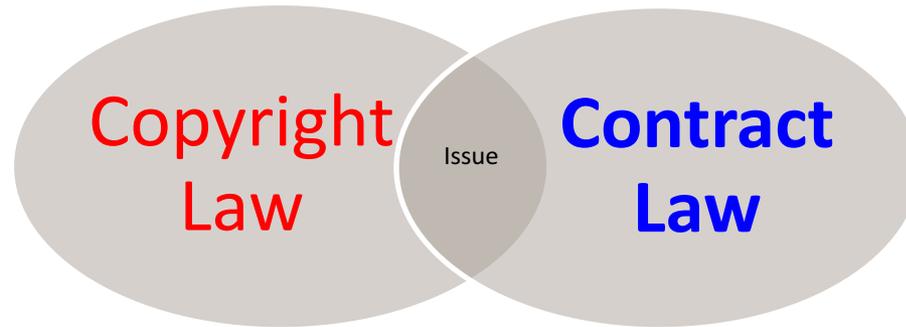
- Social media sites (YouTube, Pinterest, Facebook, etc.) Terms of Service and copyright law control use of content on these sites.
- Content, images & videos available through Creative Commons Licenses. <http://creativecommons.org/>

If using Photos and Videos

People have a right to privacy and a right to control the use of their image, voice, and likeness.

- If people are identifiable, ask them to sign a media release form so you can use their image, voice, and/or likeness.

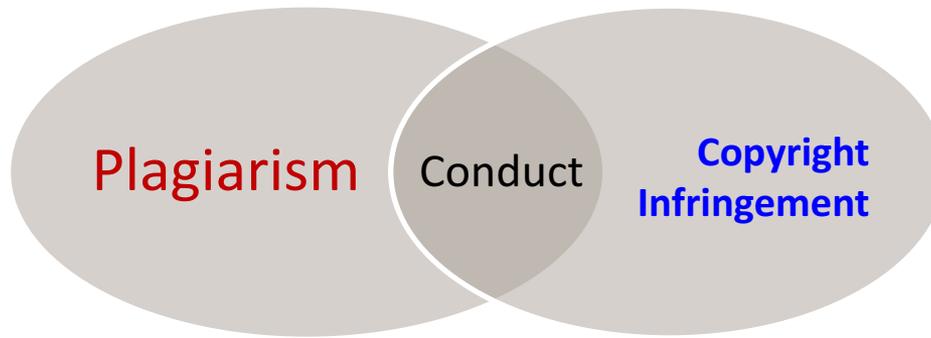




When you agree to the Terms of Use for websites, video streaming services, or an e-textbook, you usually give up your rights under copyright law (Fair Use) and agree to be bound by contract law principles.

Other Examples:

1. E-Journal subscriptions
2. Facebook
3. YouTube
4. Twitter
5. Movie streaming companies (Hulu, Netflix, etc.)



Plagiarism: The act of using another's work without attribution (passing it off as your own original work). Plagiarism involves a violation of professional and academic writing standards and rarely involves litigation.

Copyright infringement: A violation of the exclusive rights of the copyright holder (*making copies, creating derivative works, distributing copies, performing the work publically, displaying the work publically*) provided under federal law that could lead to a lawsuit for monetary damages or an injunction.

Paying attribution to the author or source of the information prevents plagiarism, but has no bearing on copyright infringement.

Creative Commons (CC)

Creative Commons is a nonprofit organization that makes available free license templates so owners can share their copyrighted works with others.

- So long as you comply with the terms of the license, you may use the copyrighted work for FREE.
- The CC website has a search engine for content (images, music, videos, etc.) available through CC licenses. <http://creativecommons.org/>

Creative Commons (cont.)

CC Licenses

- **CC BY** = Pay attribution to the original author.
- **CC BY-SA** = lets others remix, tweak, and build upon the work even for commercial purposes, as long as they credit you and license their new creations under the identical CC License.
- **CC BY-ND** = This license allows for redistribution, commercial and non-commercial, as long as it is passed along unchanged and in whole, with credit to you.
- **CC BY-NC** = lets others remix, tweak, and build upon your work non-commercially, and although their new works must also acknowledge you and be non-commercial, they don't have to license their derivative works on the same terms.

Creative Commons (cont.)

CC Licenses cont.

- **CC BY-NC-SA** = lets others remix, tweak, and build upon your work non-commercially, and although their new works must also acknowledge you and be non-commercial, they don't have to license their derivative works on the same terms.
- **CC BY-NC-ND** = the most restrictive of our six main licenses, only allowing others to download your works and share them with others as long as they credit you, but they can't change them in any way or use them commercially.
- **CC Public Domain mark**



Copyright Questions

- How much of a book (if any) am I allowed to copy and post online for students to read? For example, if I wanted to assign a chapter or a book but not the entire book. *Answer: One chapter is a safe rule of thumb.*
- My students purchase an anthology of essays textbook. I also post individual pdf versions of select essays so they can annotate them electronically. Is this fair use? *Answer: Yes, if all the students purchase the essays textbook.*
- The fact that there are software programs that allow you to download YouTube videos, does this make it legal? *Answer: NO, you will violate the YouTube Terms of Service and possibly commit copyright infringement.*

Faculty Copyright Questions

- I have students post a variety of content in a closed password protected D2L assignment drop box for specific sub study groups. Are they held to the same standards that I am in terms of what they can upload?

Answer: Same standard for both faculty and students which includes availability of Fair Use, and the Face-to-Face and Online Classroom exceptions.

- We would like to show the Netflix original film “[The 13th](#)” on campus. Ideally, it would be in a classroom, and there would be a Sociology class (and possibly a Gender Studies) in attendance, but we would invite the whole college community to attend. What is acceptable?

Answer: It depends on several omitted facts, let's discuss.

Music Performance Licenses

- Performance licenses typically cover:
 - Educational activities on campus
 - Educational activities at off campus locations that are devoted to outreach or educational activities which are “promoted by the college or university”
 - Music played on websites owned and/or operated by the college or university. Websites must be educational in nature or operated for the primary purposes of promoting the college/university to current and prospective students, faculty, staff, alumni, and the school community
- Performance licenses do NOT cover activities promoted by third parties
 - May be restricted by Terms of Service

Performance Licenses (continued)

- Music Licensing Companies
 - **BMI** = Broadcast Music Inc.
<http://www.bmi.com/>
 - **ASCAP** = American Society of Composers, Authors and Publishers <http://www.ascap.com/index.aspx>
 - **SESAC** = Society of European Stage Authors & Composers <http://www.sesac.com/>
- Dramatic performances
 - Our performance licenses do NOT cover dramatic musical performances which include musical comedies, operas, plays with music, revues, ballets, etc. in which there is a live human representation or interpretation involved.

Other Types of Licenses

- Mechanical License (aka Compulsory License)
 - The right to record and distribute another artist's song ("cover") for a low fee (9.1¢/per song per recorded unit)
 - Available *after* a song has been commercially distributed
 - Covers both music & lyrics, but *not* the sound recording
- Master Use License
 - Any time you use someone else's recording to create your own work
- Synchronization License
 - The right to "sync" a sound recording with any audio/visual element
- Reprint License
 - Allows you to put the lyrics to a cover song in your album liner notes

Ownership of Intellectual Property

Hired-to-Invent doctrine (*Patents*)

Work-for-hire doctrine (*Trade Secrets, Trademarks, & Copyrights*)

- IP created by an employee within the scope of employment is owned by the employer, unless a signed written agreement states otherwise (i.e. IFO and MSCF labor agreements).
- Scope of employment is usually defined very broadly (*when employee is serving the interests of employer*).
- Students who are not employees, own their IP.
- Students who are minors *cannot* sign contracts, which requires their parents to sign on their behalf.

§ 201. Ownership of Copyright

Copyright Act of 1976

- (a) **Initial Ownership.** — Copyright in a work protected under this title vests initially in the author or authors of the work. The authors of a joint work are co-owners of the copyright in the work.
- (b) **Works Made for Hire.** — In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.

Student Ownership

Students own their original works

- Student Projects (artwork, photographs, mobile apps, recipes, reports, research papers, videos, PPT presentations, etc.)
- Homework assignments
- Blog contributions unless the Blog's Terms of Service state otherwise and use is voluntary

Obtain the student's written permission with the [**Student Work Permission form**](#) to use their copyrighted works for anything other than evaluation of the student's academic achievement.

MnSCU Board Policy 3.26 Intellectual Property

Part 4, Subpart A sets forth the basic ownership categories:

1. Institutional Works (employer ownership, works-for-hire, commissioned works, creative works authored within the scope of employment, etc.)
2. Scholarly Works (faculty/student ownership in their scholarly works)
3. Personal Works (developed on your own time and dime)
4. Student Works (enrolled students – excludes student employees)

(Policy is consistent with faculty labor agreements and IP law.)

Modifying Ownership of a Work

MnSCU Board Policy 3.26, Part 4, Subpart B allows modification of ownership of intellectual property:

1. Sponsorship Agreement (*grants*)
2. Collaborative Agreement
3. Specially Commissioned Work Agreements
4. Substantial Use of Resources

NOTE: First three are *WRITTEN AGREEMENTS!*

Procedure 3.27.1: Copyright Clearance

- “The act of ensuring a proposed use of another’s materials complies with copyright law.”
- The **user** of the material is responsible for clearing copyright.
- What to do:
 - Use materials not protected by copyright or your own materials
 - Get copyright owner’ permission (letter, subscription, license).
 - <http://www.minnstate.edu/system/asa/academicaffairs/policy/copyright/faq.html>
 - Perform a Fair Use Analysis using the Fair Use Checklist
 - Use the TEACH Act checklist

Creative Commons (CC)

Creative Commons is a nonprofit organization that provides free license templates so owners can share their copyrighted works with others.

- So long as you comply with the terms of the license, you may use the copyrighted work for FREE.
- Example: CC Attribution License 4.0 International Public License. *Anyone using content made available through this license has to pay attribution to the original author.*
- The CC website has a search engine for content (images, music, videos, etc.) available through CC licenses.
- <http://creativecommons.org/>

Resources

System Legal Counsel:

Sarah McGee, Assistant General Counsel

Sarah.McGee@minnstate.edu (651) 201-1410

Michelle Owen, Assistant Attorney General

Michele.Owen@ag.state.mn.us (651) 757-1322

System Office Resources:

Gary Hunter, ASA System Director for Policy, Procedure, and Intellectual Property, Gary.Hunter@minnstate.edu (651) 201-1659

System Copyright website

www.minnstate.edu/system/asa/academicaffairs/policy/copyright/index.html

System Intellectual Property website

www.minnstate.edu/system/asa/academicaffairs/policy/ip/index.html