Copyright and Fair Use : An Introduction for Faculty

Laura Quilter, University of Massachusetts - Amherst

Available at: https://works.bepress.com/laura_quilter/6/
Copyright & Fair Use
an introduction for faculty

Laura Quilter / UMass Library
Open Access Week, 2012 Oct. 23
why do faculty care?

- creators & owners of copyrights
- users of others' material in teaching
- users of others' material in research / publications

- changes in copyright law and publishing have turned academic copyright into an impediment to research and teaching
part 1: you own copyrights.

now what?
you own copyrights! (lots of them)

- any "original work of authorship"
- "fixed in any tangible medium of expression"
  - what does that mean?
- you don't have to register or print (c) on the document (although it's helpful)
- the (c) extends 70 years after your death!
"fixed in any tangible medium of expression"

- .... ?
  - papers
  - photographs
  - unpublished manuscript
  - letters
  - emails
  - slide decks
  - scribbled notes on post-its
  - doodle
is there anything you can't copyright?

- facts, ideas, methods: the digits of pi (3.14159...), the A-B-Cs (not an "original work of authorship"), a plot, a recipe, a formula
- functional designs / "useful articles"
  - clothing or furniture designs
- short phrases and titles
- works by the US government

**cf. trademark, trade secret, patent, contracts**
... your copyright lets you:

- authorize **reproductions** (copies), the **first distribution** (publication), **derivative works** (translations, adaptations), performance, display, broadcast
- **assign** your copyright or a part of it to someone else (e.g., a journal)
- "**license**" your work to someone else (e.g., Creative Commons; permit re-use)
- **terminate an assignment** after 35 years
... BUT your copyright DOES NOT:

- guarantee attribution / credit
- allow you to control re-sale
- allow you to prevent a "fair use" (critique, news, teaching, transformation)
- allow you to control facts
- allow you to control use of your image
... you can transfer your copyright

- **assign** your copyright or a part of it to someone else (e.g., a journal)
- "**license**" your work to someone else (e.g., Creative Commons; permit re-use)
- **terminate an assignment** after 35 years
assigning your copyright

- When you assign your copyright to a journal, you no longer own the copyright to your article. You are now a legal stranger to your article* and may have to ask permission from the journal to reprint it, distribute it, or adapt it.
- Does the journal need you to assign your copyright to them to print it? **NO.**

* in most circumstances
alternatives to assignment

- You can *license* some rights.
  - Publisher may only need non-exclusive rights
    - First publication; credit; rights to re-print.
  - Open Access ("OA") publications
  - Creative Commons licensing
    - CC-BY guarantees *attribution*
Creative Commons

http://creativecommons.org/choose/
alternatives to assignment

● You can assign your copyright but retain some rights.
  ○ SPARC Addendum (attach it to your author agreement!)
  ○ YOU KEEP -- Rights to re-distribute (classroom use? faculty requests, include in other works), self-archive, archive in your institutional archive, adapt / translate
ADDENDUM TO PUBLICATION AGREEMENT

1. THIS ADDENDUM hereby modifies and supplements the attached Publication Agreement concerning the following Article:

   (manuscript title)

   (journal name)

2. The parties to the Publication Agreement as modified and supplemented by this Addendum are:

   (corresponding author)

   (Individually or, if one or more author, collectively, Author) (Publisher)

3. This Addendum and the Publication Agreement, taken together, allocate all rights under copyright with respect to all versions of the Article. The parties agree that whatever there is any conflict between this Addendum and the Publication Agreement, the Addendum will prevail.

http://www.arl.org/sparc/author/
open access facilitates scholarship!

- greater distribution without journal fees
  - developing nations, less wealthy institutions, students & teachers, practitioners, the public
- less hassle without permission requests & transactions for routine uses
- improved citation indexes
- helps research & university budgets
  - cost of research... page charges... subscriptions... peer review... other uses
UMass ScholarWorks

Selected Works of Jane E. Fountain

Browse by Article Type
Articles

Articles


Paradoxes of Public Sector Customer Service, Governance: An International Journal

http://scholarworks.umass.edu/
more information

- UMass ScholarWorks, [http://scholarworks.umass.edu](http://scholarworks.umass.edu)
- Creative Commons, [http://creativecommons.org/](http://creativecommons.org/)
- SPARC, [http://arl.org/sparc/](http://arl.org/sparc/)
part 2: you use copyrights.

is it fair use?
copyright controls *some* rights...

... but not all rights. Rights not controlled by copyright include:

- numerous specific statutory exceptions
- "de minimis" uses
- uses of non-copyrighted aspects (facts)
- first sale
- fair uses
- licensed uses [e.g., Creative Commons; library licensed; requested permission]
"What is 'fair use'?"
what is fair use?

"A legislatively sanctioned element of 'gut instinct' lies at the core of every fair use determination." Julie Cohen, 1995

17 USC 107: "the factors to be considered shall include" ...
* purpose /character
* amount taken
* nature of the work
* effect on market
purpose or character of the use

- transformative in character?
- transformative purpose?
- non-profit educational? (multiple copies for classroom use)

- substitutive
- commercial

more fair

less fair
nature of the copyrighted work

- factual?
- published?
- not commercially available at a reasonable price?
- creative (fictional, artistic)
- unpublished? * [not dispositive]
- commercially available?

more fair

less fair
amount & substantiality taken

- only as much needed?
- a small portion?
- a portion that doesn't substitute?
- more than needed?
- the whole thing?
- the heart of the work?

more fair → less fair
effect on the market

- does not substitute in the market?
- does not substitute for a derivative market?
- no licenses available
- substitutes in the market?
- substitutes for a derivative market?
- licenses available (reasonable $$)
other factors to consider

- public benefit?
- benefits purposes of copyright?
- good faith?
- clean hands?
- attribution?

- no public benefit
- bad faith
- unclean hands
- no attribution
add it up?

"Fair Use Visualizer" based on Field v. Google, Benedict.com
weigh it?
... discipline-specific guidance: "Best Practices in Fair Use"

- Media Studies Publishing
- Teaching for Film & Media Educators
- Media Literacy Education
- Scholarly Research in Communication
- Documentary Filmmakers
- Music Scholarship
- Dance-Related Materials
- Poetry
- Visual Resources Association
- Story Arts
- User-Generated Video
- Academic & Research Libraries
FAIR USE: IT'S THE LAW

EXERCISE YOUR COPYRIGHT RIGHTS IN THE CLASSROOM

more information on fair & lawful uses in teaching & research

● UMass Library eReserves, http://ereserves.library.umass.edu/
● Center for Social Media, Best Practices in Fair Use http://centerforsocialmedia.org/fair-use/best-practices
● Kenneth Crews, TEACH Act (distance ed) http://copyright.columbia.edu/copyright/special-topics/distance-education/
more information

- lquilter @ library.umass.edu