Appendix H: Copyright FAQ’s

COPYRIGHT BASICS

1. **What types of material does copyright protect?**

   The United States Copyright Law of 1976, codified in the U.S.C. Title 17, protects creative work such as literary works (e.g., books, poems and essays), architectural works, musical works, dramatic works, games, movies, videos, photographs, and all kinds of digital works (e.g. software, web pages, computer programs). There are three qualifications for copyright: (1) the work must be “fixed in a tangible medium of expression,” meaning it must exist in some physical form for at least some period of time, no matter how brief; (2) the work must be original; (3) the work must involve some creative effort (e.g., a telephone book is not copyrightable.) Copyright protection does NOT extend to an author’s underlying creative ideas or to facts, because copyright protection is intended to promote the creation of original works that depend on the free exchange of ideas and information.

2. **How is copyright protection obtained?**

   Copyright protection automatically extends to any creative work as soon as it appears in a fixed form. Publication is not necessary to secure copyright. Although registration of the work with the Copyright Office is not required to establish copyright, registration provides important additional rights to the author (e.g., statutory damages, attorney's fees and Customs remedies).

3. **Who owns a copyright?**

   Generally, the original author of the work owns the copyright. There are two major exceptions to this rule. First, in situations of “work made for hire,” the employer or institution may own the copyright. Second, the author may transfer copyright with a signed written document.

4. **How long does a copyright last?**

   Because copyright laws have been changed and amended, the life of a copyright depends on when and where it was created. For U.S.-authored works, the following applies: Works published after 1978, the copyright lasts for the life of the author plus 70 years. Works published before 1978 can have copyright protection for a maximum term of 95 years. If the work is a work for hire or is published anonymously or under a pseudonym, the copyright lasts between 95 and 120 years, depending on the date the work is published. All works published in the United States before 1923 are in the public domain. Works published after 1922, but before 1978, are protected for 95 years from the date of publication. The use of unpublished works has been traditionally more restrictive in order to protect the author’s right to first publication. The copyright term for unpublished works is “life plus 70 years.”

5. **What is the TEACH act?**

exempt from the scope of copyright infringement. The law covers the scope of educators’ rights to perform and display works and to make the copies integral to such performances and displays for digital distance education. The Act applies to a virtual classroom, such as those faculty members create using the University’s course management software known as “ANGEL”. The rights identified by the TEACH Act are more restrictive than those applicable to face-to-face teaching. See http://www.utsystem.edu/OGC/IntellectualProperty/teachact.htm for a review of the TEACH Act and a handy checklist.

6. What is the DMCA?

Title II of the Digital Millennium Copyright Act of 1998 (the “DMCA”), the "Online Copyright Infringement Liability Limitation Act," limits the liability of complying Internet service providers ("ISPs"), including universities, for the infringing acts of the users of the ISP’s systems. The University has a formal DMCA policy. Among other provisions, the DMCA imposes procedures on the University’s response to subpoenas for information about students’ use of electronic materials and forbids programs or devices that avoid, bypass, remove, deactivate, or impair a technological measure that prevents copying. You should bring DMCA infringement notices to the attention of the Dean’s Office immediately.

CLEARING COPYRIGHT PROTECTED MATERIAL

1. When do I need to clear copyright?

You should clear copyright whenever your proposed use of a copyrighted work could infringe on the exclusive rights of the copyright owner. These six rights include (1) reproduction of the work; (2) distribution of copies of the work; (3) making of “derivative” works; (4) public performance; (5) public display and (6) the right to prevent distortion, modification, or mutilation of certain types of artworks under VARA (the Visual Artists Rights Act, 17 U.S.C. 106A.).

2. Are there any instances when I do not need to clear copyright?

There are three exceptions to the general rule that you should clear all material for copyright:

- When the material is in the public domain. Most works enter the public domain when their copyrights expire, but some work, such as government works, are in the public domain from their inception.

- If you are using the material for classroom use. This exception allows educators to use a work for “performance or display” during the course of “face to face” classroom activities. You must meet the four requirements for a face-to-face teaching activity. Please note that the repetitive use of copyrighted works in a course-pack does not qualify under the “classroom use” exception and very likely won’t qualify as fair use.

- If your use of the work meets the test for “fair use”.
3. When does use of a copyrighted work fall within the “fair use” exception?

The “fair use” exception to copyright infringement allows copyrighted material to be used in certain situations to promote the free exchange of ideas, including criticism, comment, news reporting, teaching, scholarship or research. You can only be certain that the fair use exception applies if the use is a non-profit use. Congress designed the “fair use” test to be flexible — in practice, the scope of the doctrine is difficult to apply. For more information, read Section 107 of the Copyright Act of 1976.

4. How do I determine if the work I want to use falls within the fair use exception?

The four factors to be considered in determining whether a use meets the fair use exception are:

- The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- The nature of the copyrighted work (on a continuum of creative to factual);
- The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- The effect of the use on the potential market for, or value of, the copyrighted work.

The application of the fair use doctrine involves a complex consideration of these four factors. [See: http://fairuse.stanford.edu/Copyright and Fair Use Overview/chapter9/9-b.html#5] In addition, the Second Circuit’s decision in the Texaco case (American Geophysical Union v. Texaco, Inc., 37 F.3d 881 (2nd Cir. 1994)) raises troubling questions about the breadth of the fair use protection available to the academic community [See Georgia Harper’s discussion of the Texaco case at http://www.utsystem.edu/OGC/IntellectualProperty/tex2.htm#fn1.

Some types of materials will not qualify for the fair use exception and require prior written permission from the copyright owner. These include:

- Generally, any use for profit;
- Unpublished works, including theses and dissertations, unless they are in the public domain;
- Extensive use of a "Special work", such as maps and drawings or poetic prose;
- Consumable works, including workbooks, exercises, standardized tests, test booklets, and answer sheets;
- Extensive use of a work of music or other performance;
- Software and databases and,
- Copying database search results.
Though the University supports a broad reading of the fair use doctrine, you should always check to be sure your copying or use meets the requirements for “fair use.” Several guidelines exist to help you in this determination, but no single one is truly authoritative. The University recommends following the University of Texas “Rules of Thumb”. The Copyright Management Center at Indiana University provides a very helpful fair use checklist that can guide your analysis. Please consult with the Dean’s Office if you need help with a fair use analysis.

5. **Do I need to clear the use of any electronic sources or sources obtained from the Internet?**

Yes! Contrary to the perception of many, you must assume materials posted on Internet, available for personal downloading or forwarded by e-mail are entitled to the same copyright protection as materials in more traditional form. File-sharing (that is, uploading or downloading copyrighted songs, movies or software without permission from the copyright owner or its agent) is illegal and is a violation of University policy. This has important ramifications for faculty members who choose to post content on their websites for student use. If you plan to download material to your course website, your use of the work must fall within the “fair use” doctrine. Students must also be advised in writing that, unless the posted materials are in the public domain, any copies they download are for personal use only.

Activities that also may violate copyright, trademark, publicity rights and other laws include deep linking to outside websites, posting material to your website without obtaining permissions, and posting someone else’s name, photo or works of authorship to your website without obtaining the person’s permission. Before posting any material or links on your website, read “Using Materials from the Internet: What You Can and Cannot Do.” Members of the University community are also encouraged to seek guidance from the University counsel with questions about the legality of various uses of copyrighted electronic materials.

**OBTAINING PERMISSIONS**

1. **Why is obtaining permission important?**

   Obtaining permission is important for two practical reasons. First, permissions are instrumental, under U.S. copyright law, to protecting the fundamental rights of the work’s author. Second, obtaining permission protects you and the University from liability for copyright infringement. Obtaining permission is actually straightforward and typically inexpensive, though there are notable exceptions in several disciplines (for example, it can be challenging to track down rights holders for works in the fields of religion and spirituality). While the burden in time and cost for getting permissions may seem high to you, remember to weigh that burden against the time and cost involved in a lawsuit for copyright infringement.

2. **How do I obtain permission for material I want to use for an educational or scholarly purpose?**
Once you have decided to seek permission, there are six steps to get you there:

- **Determine if permission is needed.** Is the material protected under the law, and would your use violate the rights of the owner?

- **Identify the owner.** This usually involves looking at the copyright notice to find the publisher or copyright owner. The Copyright Office Circular 22 explains how to find the owner of a copyright. In some cases, as with music, the work may have multiple owners with separate sets of rights. You will need to obtain permission from all of them. Publishers are often the rights holders. If they are not, they will usually direct you to the current rights holders.

- **Identify the rights needed.** This step requires you to specify exactly what work you need (e.g., a poem from a collected work), and submit a request detailing your intended use of the work. Every permissions agreement covers three variables: exclusivity, terms of use, and territory where the work may be used. The reproduction of entire works is often prohibited. To obtain permission easily, we recommend asking for no more than 20% of the work.

- **Plan Ahead.** Most permissions take one to three months to process. If you wait to secure permissions at the last minute, the owner may increase the fees and it could lead to delays in publication. Publishers usually grant permission to use a work for one-time use only. If you are using materials previously cleared, turn-around time on permissions could still take one to three months to process.

- **Contact the owner and negotiate whether payment is required.** Payment varies depending on the type of work you would like to use, but a standard fee is $50. Contact the Publisher. Publishers often have a direct link to a copyright permission form under the contact tab of their web site. Contact the Author. This can be a bit of the challenge and a bit of an adventure. Often the byline for the author will contain useful contact information, such as employment or university affiliation, which can be used to locate the author. If this is not available, a search engine such as Google can be helpful in locating an author. Finally, copyright records can show the author's address. The key here is perseverance. If one avenue closes, look for another one to open.

- **Get your permission agreement in writing.** In case you are sued for copyright infringement, it is much easier to resolve disputes over terms of the contract when the contract is in writing.

3. **Do printed course-packs require copyright permission?**

Faculty members who require students to read supplemental text materials often produce the materials in a single supplement referred to as a “course-pack.” The purpose of the course-pack is to give students easy access to supplemental reading materials. Faculty members may desire to use the same supplemental materials for multiple classes over multiple quarters or semesters.
For each item of supplemental reading in a printed course-pack, you must determine if the use will be a fair use. 
http://www.publishers.org/conference/copyguide.cfm provides helpful guidance:

- Limit course-pack material to
  - single chapters
  - single articles from a journal issue
  - several charts, graphs, or illustrations
  - other similarly small parts of a work
- Include
  - any copyright notice found in the original
  - appropriate citations and attributions to the source
- Obtain permission for materials you plan to use repeatedly for the same class or classes.

4. **How do I obtain permissions (“clear copyright”) for my course-pack?**

See “How to request copyright permission” at http://www.publishers.org/about/copyrightresources.cfm

5. **What if I can’t find the copyright owner, or I don’t get a response to my request?**

Assuming that obtaining permission of an author is impractical, you can obtain rights either without charge or for a fee via several services that have large collections of rights. These are called “third party permissions.” For some examples, see http://library.ups.edu/circ/copyright_clearance.htm