COPYRIGHT ON CAMPUS 2:

THE VIRTUAL CLASSROOM

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What is the *VIRTUAL CLASSROOM*?

One definition…

- a mode of computer-based education whereby the instructor interacts with students either via video-conferencing, Internet broadcast, or email

Another definition…

- Distribution of materials by any digital means to enable students to read, listen to, view, or reproduce materials assigned by instructor as part of a course offered by institution

What does a virtual classroom look like at UW-Madison?

Online Course

- No F2F – all communication via electronic means
- Traditional online courses
- MOOCs (massive online open courses)

Blend F2F and technology elements

- Course management systems
- Wikis
- Blogs
- Lecture Capture
- E-reserves

Virtual Classroom Issues

- Use/Reuse of copyrighted materials
- Privacy
- Licenses/Liability
- Rights holders – who owns it?
- Protecting and managing rights

Standard F2F Instruction- copyright principles

- Section 110(1) – Copyright Act
- Allows public display and performance of another's work in face to face teaching activities
- Applies to any work – regardless of medium
- Includes display or performance of entire work
- Copy used must be lawfully acquired
- Covers display and performance, not copying – see Fair Use.

F2F v. Digital Distance Ed

Digital distribution of materials

Copyright Act Provision

- TEACH Act (Technology, Education and Copyright Harmonization Act)
- Enacted in 2002 as an amendment to Section 110(2) of the Copyright Act
- Not a separate law, but often just referred to as the TEACH Act

Digital Distance Ed – 110(2)

- Section 110(2): same F2F instructor required to pare down materials to show to distance students or to make available over Internet to F2F students.
- <u>Covers</u> "mediated instructional activities"
  - Materials typically used by instructor during in-class lecture(e.g., movie or music clips, poetry selection, images of artworks)
- <u>Excludes</u> digital delivery of supplemental materials instructor may assign students to read, view or listen to outside of in-class instruction
- Allows digitization of analog work but….
  - Only to extent authorized to use work under Section 110(2)
  - And only if work not available digitally in a format free from technological protection
- If need to show movie clip and DVD doesn't permit "ripping," can only digitize portions, not entire DVD

TEACH Act: 22 Pre-requisites!

(source: Copyright Crash Course - University of Texas Libraries)

- Non-profit accredited educational institution
- Institutional policy for copyright use
- Educational materials on copyright available to university community
- Systems can't interfere with technological controls within materials to be used
- Materials are for students in class
- Access to materials limited only to students in the class
- Materials will be provided at instructor's direction during relevant class period
- Materials directly relate to and assist instructor's teaching content
- Instructor's class is part of institution's regular offerings
- Provide notice that materials protected by copyright
- Use technology designed to reasonably limit student ability to further distributed materials
- Materials available to students only for period of time relevant to context of class session
- Store materials on secure server and transmit only as permitted by law
- Limit copies to one needed for transmission
- Materials limited to proper type and amount
  - Entire non-dramatic literary and musical works
  - Reasonable and limited parts of dramatic literary, musical, or audiovisual works
  - Displays of other works, such as images, limited to amounts similar to typical displays in F2F teaching
- Materials not intended to be covered by TEACH Act
  - Materials specifically marketed for classroom use for digital distance education
  - Illegal copies
  - Textbooks, coursepacks, electronic reserves and similar materials typically bought by students for review outside classroom session
- Can digitize analog materials if meet 112(f):
  - No digital version of work available to institution
  - Digital version available to institution subject to technological protections
  - Only copy amounts authorized to transmit under 110(2)

Alternative to TEACH Act: Fair Use

- Section 107 – Copyright Act
- Where TEACH Act may not allow use, move to Fair Use Analysis
- 4 Factors
  - Nature of Use
  - Nature of Work Used
  - Extent of Use
  - Economic Effect

Nature of Use – Factor 1

Favor Fair Use

- Teaching
- Research
- Non-profit Educational
- Personal
- Criticism
- Commentary
- News Reporting
- Parody
- Other “transformative” use

Weigh Against Fair Use

- Commercial
- Entertainment

Commercial use can be “fair use” if involves creative uses such as parody, criticism and commentary

Nature of Work Used – Factor 2

Favors Fair Use

- Factual or nonfiction
- Published
- Necessary for a favored educational objective

Weighs Against Fair Use

- Highly Creative (art, music, novels, films)
- Fictional
- Unpublished

Amount of Work Used – Factor 3

Favors Fair Use

- Small amount
- Section used is not central to work
- Using minimum needed for purpose

Weighs Against Fair Use

- More than a small amount*
- Portion used is central to or "heart of the work"

*Balance with other factors. If other factors favor fair use, suggests you can use more than otherwise.

Economic Effect – Factor 4

Favors Fair Use

- Minimal use of or access to copies
- Original is out of print or otherwise unavailable
- Copyright owner is unidentifiable
- No established permission market

Weighs Against Fair Use

- Copies are made publicly or widely available
- Use is long-term or repeated
- Competes with sales of original
- Permission was reasonably available and affordable

Fair Use: Two Questions

(source: Association of Research Libraries
Code of Best Practices in Fair Use for Academic and Research Libraries)

Question 1

- Does use transform original copyrighted material by using it for broadly beneficial use different from that of original OR does it just copy the work for same intent and value as original?

Question 2

- Was material taken appropriate in kind and amount, considering nature of copyrighted work and the use?

If Yes to both…

It’s likely a Fair Use.

Fair Use

- *Transformative*: modification or physical alteration to work not required. Includes "repurposing" original work for presentation to new audience for new purpose
- Even if qualifies as Fair Use, the TEACH Act guides best practices for transmission and use
- Fair Use rights can be limited by contract
  - Library license or subscription agreements
  - "Click-through" agreements

What can the Library do?

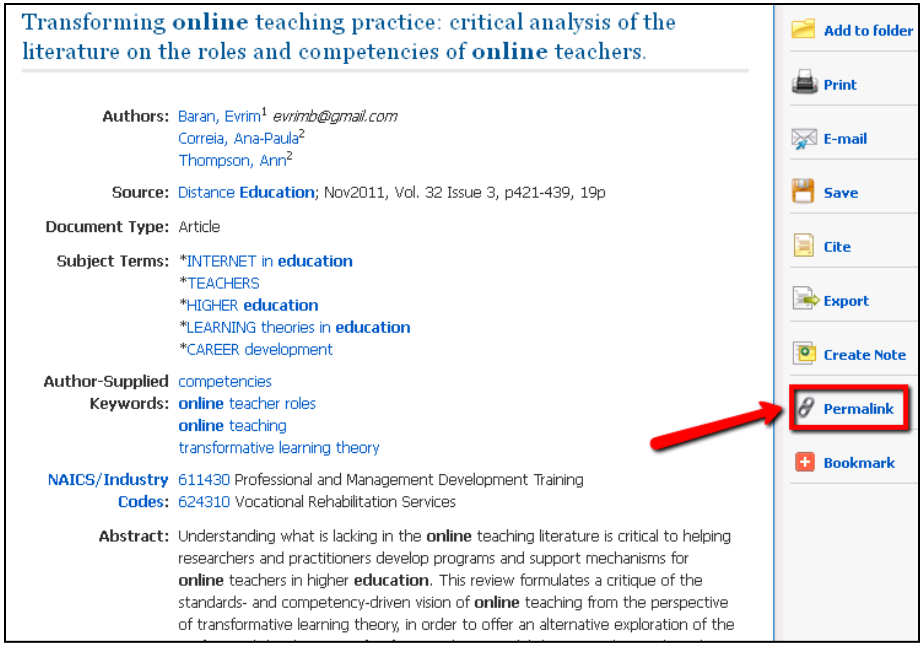
- E-reserves
- Provide access to licensed resources
- Advise and support instructors digitizing works to add to course management systems
- Help connect users to public domain or Creative Commons resources
- Instruction for students on appropriate re-use of copyrighted materials
- *Is there a reasonable way libraries can support permissions seeking?*

Electronic Reserves

- Rights involved – copying, public display, public performance, public distribution
- Subject to Fair Use analysis – similar to traditional reservation of print copies and sound and video recordings
- Use additional protections to avoid further distribution/duplication or potential impact on market
  - Password-protected storage
  - Stream audiovisual media, lower-resolution versions, watermarks on textual materials and images
  - Consider permission after first semester use if functional permissions market exists
  - Purchasing licensed materials to make available
  - Provide appropriate attribution
- Digital Millennium Copyright Act "safe harbor" provisions do not apply if reserve materials alleged to infringe copyright.

Digital Library – Licensed Resources

- Share links directly to online library resources
- Students are already included in license to access these materials, so avoid need to rely on fair use
- Contact library for help finding the direct links



Advise and support instructors digitizing works to add to course management systems

- Review request under TEACH Act and Fair Use
- If material is created and marketed primarily for use in courses (textbook or workbook), fair use will generally support only small portion of work to be displayed on digital network or system
- Whether approved for digitization under TEACH Act or Fair use…
  - Must be direct connection between work/amount of work and instructor's academic purpose
  - Limit availability for duration of project or course
  - Limit to only students enrolled in course
  - Inform students of their rights and responsibilities in using course materials
  - Provide full attribution in form satisfactory to scholars
  - Stream media rather than make available for download, use lower resolution copies, use watermarks on textual materials and images

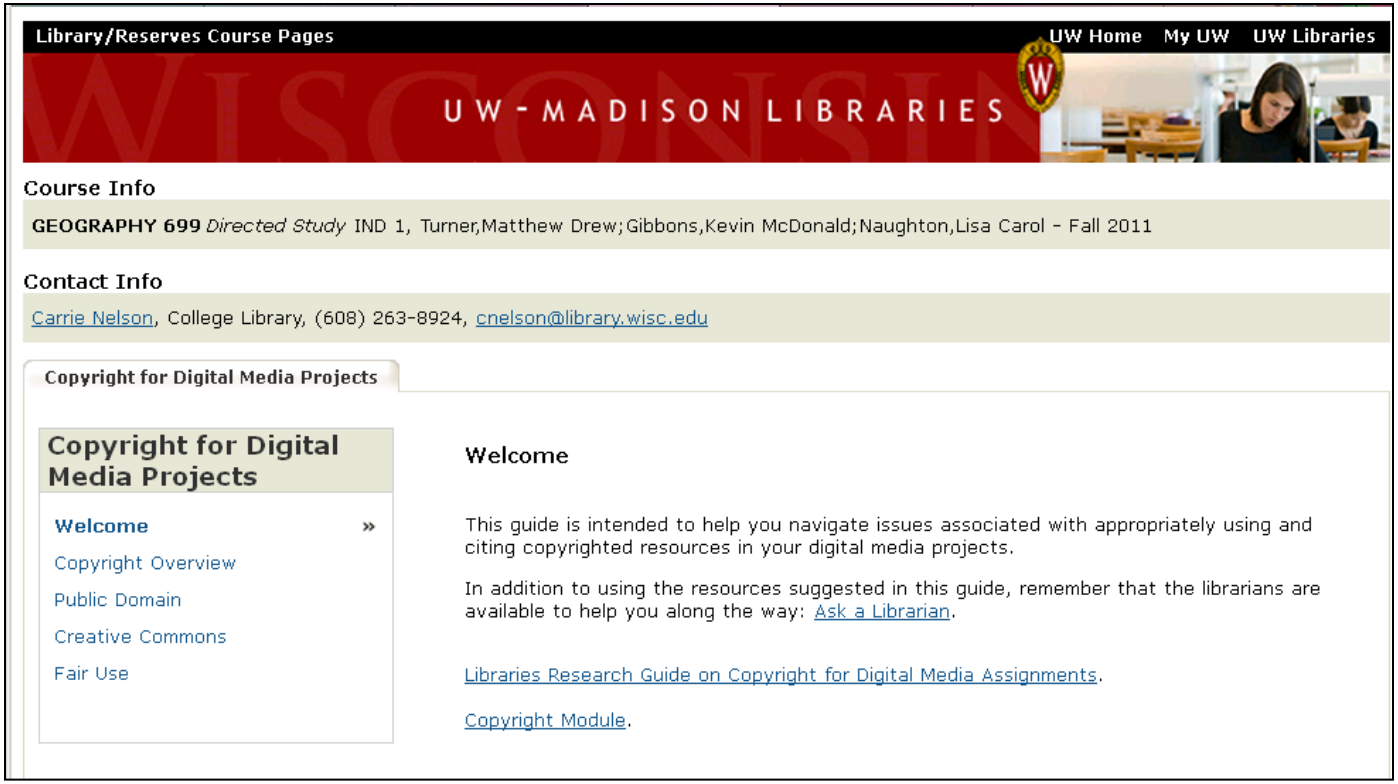
Help connect users to public domain or Creative Commons resources

Libraries collect and facilitate access to materials with less restrictive re-use options:

- Music: http://researchguides.library.wisc.edu/content.php?pid=121080&sid=1041674
- Images: http://researchguides.library.wisc.edu/content.php?pid=121080&sid=1041675
- Video: http://researchguides.library.wisc.edu/content.php?pid=121080&sid=1041676

Instruction for students on appropriate re-use of copyrighted materials

- In-class instruction from a librarian
- Customized course pages



Cambridge University Press, et al., v. Becker (Georgia State University)

Cambridge University Press, et al., v. Becker (GSU)

- Publishers – Cambridge University Press, Sage Publications, and Oxford University Press
- Sued in Federal Court in Atlanta
- Alleged GSU violating copyright by allowing faculty to use university networks and university library E-reserve systems to copy and distribute book excerpts to students without paying licensing fees
- GSU defense: Fair Use
- Publishers alleged 74 violations. Court found 5 copyright infringements. Remainder = fair use

Cambridge University Press, et al., v. Becker (GSU)

- Decision issued 5/11/2012 – 350-page opinion
- Fair use – focused on Purpose of Use (educational purposes by nonprofit institution) and Nature of Work (informational) – plus for GSU
- Amount Copied (3rd factor)
  - Dismissed Classroom Guidelines as antiquated and out of step with Section 107. Too stringent.
  - Replaced with new "bright-line" 10% rule
    - Books of 9 or fewer chapters – 10% of page count
    - Books of more than 10 chapters – 1 chapter
  - Market Impact (4th factor)
    - Digital license for copying book – favored Publishers
    - No digital license for copying book – favored GSU

Cambridge University Press, et al., v. Becker (GSU

- James Grimmelmann – The Laboratorium says…
  - Likely to be fair use if…
    - Using less than 10%
    - Using more than 10% of book that is not available for digital licensing
    - Using more than 10% of book that is available for digital licensing but makes insignificant licensing revenues

- Binding in Georgia but only persuasive authority outside of Georgia
- UW E-reserves: pay attention to court ruling but address each request case-by-case

Lecture Capture – Copyright Considerations

- Originally authorized to use copyrighted materials under F2F principles of Section 110(1)
- Need to re-evaluate ability to use materials depending on proposed use of captured lecture
- Fair Use and TEACH Act apply

Lecture Capture - Privacy

- Depends on proposed use of captured lecture
- Use only within current class – generally no issues
- Use in other classes or distributed to public…
  - Unless use strategic filming to eliminate images of students, will need releases from students if personally identifiable
  - If student work is included and captured in lecture, need release/permission from student per FERPA and Copyright

Permissions

- Use not allowed by license, public domain, TEACH Act or Fair Use – need to obtain permission
- Get permission in writing
- Make sure person giving you permission is authorized to do so
- If you can't find owner or owner is unresponsive – contact Office of Legal Affairs to discuss
- Don't need to request permission to use public domain material, U.S. Government material, work authorized for use by Creative Commons or other license, or work otherwise allowed for use under Copyright Act (e.g., library rights)

Permissions - Sources

(source: Copyright Crash Course – University of Texas Libraries)

- Copyright Clearance Center http://www.copyright.com/
- Foreign Collectives
  - VERDI (Finland, France, Germany, Ireland, Italy, The Netherlands, Spain - http://cordis.europa.eu/econtent/mmrcs/verdi.htm)
  - CLARA (Norway - http://www.clara.no/english/index.html)
  - Copyright Licensing Agency ("CLA") – United Kingdom http://www.cla.co.uk/)
- Freelance Writers
  - Publication Rights Clearinghouse (https://nwu.org/publications-rights-clearinghouse)

Permissions – Sources

(continued)

- Image Archives (catering to educational institutions)
  - Academic Image Cooperative http://www.studiolo.org/index.htm
  - Allan Kohl's Art Images for College Teaching (http://quod.lib.umich.edu/cgi/i/image/image-idx?c=aict&page=index)
  - American Society of Media Photographers (http://asmp.org/)
  - Artists Rights Foundation (http://www.artistsrights.org/)
  - Artists Rights Society (http://www.arsny.com/)
  - ARTstor (http://www.artstor.org/index.shtml)
  - Aurora Picture Network International (http://www.auroraphotos.com/)
  - Lantern Slides of Classical Antiquity: A Center for the Study of Architecture Project in Cooperation with Bryn Mawr College (http://www.brynmawr.edu/library/visualresources/lanterns/)
  - Media Image Resource Alliance (MIRA) (http://library.mira.com/)
  - Society of Architectural Historians' Image Exchange (http://www.sah.org/imagex.html)
  - Visual Artists and Gallery Association (http://www.vaga.co.uk/)

Permissions – Sources

(continued)

- Music Performance
  - UW limited educational licenses with ASCAP, BMI, SESAC (check with Office of Legal Affairs)
  - Fair Use
  - 3 separate rights and 3 separate permissions:
    - Performance right in musical composition
    - Performance right in sound recording
    - Right to duplicate the musical composition
  - Contact information for publishers, record labels, music rights agencies
    - All-Music Guide (http://www.allmusic.com/)
    - Music Research Consultants (http://www.musicresearch.com/)

Permissions – Sources

(continued)

- News Archives – check websites for news organizations
- Movies
  - Motion Picture Licensing Corporation (http://www.mplc.org/index/worldwide)
  - Movie Licensing USA (http://www.movlic.com/)
  - Swank Motion Pictures (http://www.swank.com/)
  - Internet Archive (educational public domain films) (http://www.archive.org/)
  - Library of Congress (search film and video copyrights post 1978) http://www.loc.gov/index.html

Rights Holders

- UW System Policy – GAPP 27 (http://uwsa.edu/fadmin/gapp/gapp27.htm)
- Ownership depends on the conditions under which the materials were created
- UW generally does not assert ownership in materials resulting from author's pursuit of traditional teaching, research, and scholarly activities

Exceptions

- Where substantial University resources are used to produce the work
- Assigned Duties: where materials are created as the **primary purpose of an employment relationship** between UW and author of materials
- Work for hire agreement

Substantial University Resources

- Includes released time from assigned duties
- Direct investment by University of funds or staff
- Purchase of special equipment for project
- Use of multi-media production personnel and facilities (e.g., multimedia instructional materials, distance education course offerings
- Extraordinary use of computing resources

Rights Holders - Students

- Student Class work - belongs to them subject to a different arrangement
- Copyright Act allows students to:
  - download, transmit, and print out images of digitized works for personal study and use in preparation of academic course assignments or other degree requirements
  - Publicly display images and perform audiovisual works prepared for course assignments
  - Keep works containing copyrighted material in their portfolios
- Instructor use or display of student work outside of class – remove names/personally identifiable information OR get written permission
- Instructor continued use of student work beyond class (e.g., collective class wiki or blog)
  - Need written permission
    - FERPA
    - Copyright

Rights Holders
Special Considerations

- Copyright notice – use it
- Identify authorized uses
  - Creative Commons license
  - Include notation in syllabus
- Watch for infringement
  - Note-sharing sites (e.g., CourseHero, StudyBlue, Notehall.com)
  - Classroom presentations on YouTube or links shared via Twitter
  - Cease and Desist – your responsibility if you own it
  - Cornell University - guidance on copyright management of course materials http://copyright.cornell.edu/policies/course-materials.cfm

Rights Holders
Special Considerations

- See Guidelines for use of Non-UW-Madison applications and service for instruction: http://www.cio.wisc.edu/Non-UWAppsServicesInstruction.pdf
- Check license provisions and Terms of Use
  - Copyright – license to use your work
  - Liability (signature authority and personal liability)
  - Privacy issues for students
  - Accessibility
- Example: UW-Madison campus-wide license with Google Apps – log in through university portal

Contact Information

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