Why do we care?

- **Justification for copyright protection**
  - Moral rights to benefit from one’s own work
  - Incentivizes creativity by linking personal gain to creation of a public good through grant of temporary and limited monopoly
  - Can attract financial support for projects/individuals which otherwise would not be able to get off the ground

- **Importance of limitations on copyright protection**
  - Society benefits from free exchange of ideas; allowing copyright protection of ideas would inhibit progress
  - Must be some room to teach, research, criticize expression copyrighted by others; otherwise, what is the public benefit?
What copyright protects

- Copyright is the protection of “original works of authorship” fixed in any tangible medium of expression (17 U.S.C 102(a))
  - Includes literary, dramatic, musical, artistic and architectural works, and certain other types of intellectual works (recordings, computer programs, compilations and derivative works)
  - If you can see, hear, or touch an expression of original work – it’s likely protected
    - Ex: video of powerpoint including photo of sculpture—4 layers!
What copyright doesn’t protect

- Works not fixed in a tangible medium of expression (e.g., extemporaneous lectures or performances not fixed in outline or other written form)
- Works in the public domain (federal government materials, or material on which copyright has expired)
- Ideas, procedures, methods, concepts, principles, discoveries, devices
- Facts, events
- Titles, names, slogans (trademark?)
- Works containing no original authorship (e.g., lists or tables taken from public documents or other common sources)
Exclusive rights of copyright holder

- Reproduction
- Creation of derivative works
- Distribution
- Performance
- Display
How long copyright protection lasts

- General rule: Life of the Author + 70 years.
  - General in the sense that we generally have nice weather in Wisconsin—a multitude of exceptions.
  - Examples:
    - Works, whether or not published, created after 12/31/1978 protected for life of author + 70 years
    - Works published before 12/31/1978 with notice = 95 years
    - Unpublished works when author’s date of death unknown = 120 years from date of creation
    - Work for hire = shorter of 95 years from publication or 120 years from creation.

- Complete Copyright Term and Public Domain list:
  [http://www.copyright.cornell.edu/resources/publicdomain.cfm](http://www.copyright.cornell.edu/resources/publicdomain.cfm)

- U.S. works only. Foreign works – check country.

- Expiration of copyright protection moves previously protected works into the public domain
Obtaining copyright protection

- Very easy! Just create a work and fix it in any medium of expression.
- Notice of copyright is optional, but is a best practice.
- Registration with copyright office is not required for work to be protected, but is required to enforce a copyright.
  - Registration within a certain amount of time (within 3 months of publication or before an infringement occurs) makes one eligible for greater damages if one were to pursue another for infringement; also could serve to deter people from infringing.
- However, prior to attaching notice or registering copyright, need to determine who holds the copyright. Authors are not necessarily always holders of copyright.
Ownership

- Who owns the work you created?
- Author/creator absent other arrangement
- Person you assigned it to
- Work for hire
  - In most employment areas, works created by employees w/in scope of employment are assumed to be “work for hire”
  - Independent contractors: written agreement is necessary
- Check out grant conditions
- Important to distinguish between ownership of the physical material and ownership of copyright
Generally disclaims copyrights to works produced by its employees created during the scope of their employment except as stated in General Administrative Policies and Procedure Papers #27 and #10.
GAPP 27: Instructional Materials
Ownership, Use and Control

- UW System Policy
  [http://uwsa.edu/fadmin/gapp/gapp27.htm](http://uwsa.edu/fadmin/gapp/gapp27.htm)
- 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
    - When the materials were created/produced as the primary purpose of an employment relationship between the university and the author(s) of the materials
    - Work for hire agreement
- Basic point: ownership depends on the conditions under which the materials were created
Substantial University Resources

- 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)
Minimal University Resources

- Includes the use of University laboratories or equipment, but does not include released time from regularly assigned duties
Assigned duties of employment

- Assigned Duties exist where materials are created as the primary purpose of an employment relationship between UW and author of materials
  - For example, hired to create software, develop materials for course, this powerpoint
# GAPP 10: Computer software ownership

<table>
<thead>
<tr>
<th>Ownership</th>
<th>Created as consequence of individual scholarship</th>
<th>Created under sponsorship of grant or contract</th>
<th>Development is joint effort</th>
<th>Developed by an employee hired for that purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Author/Creator</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>University</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Joint</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Define before project begins</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Ownership – practical considerations

- Owner responsible for defending against infringement and actively protecting copyright
- Tax consequences for royalties
- Owner responsible for controlling use (e.g., licensure)
- Sometimes easier for collaborative projects to go forward with common ownership of copyright
Using work created by others

- Public domain – no copyright protection
  - Federal government works, works whose term of protection has expired, works specifically assigned to public domain

- Assignment
  - May have copyright assigned to you

- License (standard, Creative Commons, BSD and other open source licenses)
  - Work out a license agreement with copyright holder, check for creative commons or open source license
  - Make sure it extends to all foreseeable uses

- Permission (e.g., Copyright Clearance Center)

- Statutory exception:
  - Classroom
  - Distance Ed
  - Library
  - Fair Use
Classroom Exception
17 U.S.C. § 110(1)

- Traditional Classroom: Face-to-Face instruction
  - All performances and displays of work are allowed; don’t need permission
    - Performance: motion (e.g., show film, play music, recite poem, act out play)
    - Display: static (e.g., projection of photo)
  - Materials must be legally acquired
  - Must take place in classroom or similar place devoted to instruction
  - Does not include rights to reproduce, distribute, make derivative works based on works performed or displayed
Distance Education

17 U.S.C. §110(2)

- **TEACH Act** (Technology, Education and Copyright Harmonization Act of 2002)
- Additional restrictions beyond rules for classroom use
  - Display only amount comparable to that usually displayed in live classroom
  - Non-dramatic literary and musical works perform entirely but other works only “reasonable and limited portions”
  - To extent technologically feasible, limit access to works to students in course
  - Implement technological measures to reasonably prevent students from retaining copies or distributing
  - Requires institution to have copyright policy and educate faculty, staff, and students
  - Note: TEACH Act not permit showing entire film, but may still be fair use to do so
Fair Use  (17 U.S.C. §107)

- The fair use of copyrighted work for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research is not infringement on copyright.

- Equitable “rule of reason”
Four factors

- Purpose and character of use
- Nature of work
- Amount of work used
- Effect of use on market
Purpose and Character of Use

- Fair Use

- Research
- Scholarship
- Nonprofit Educational Institution
- Criticism
- Comment
- News reporting
- Restricted access

+ Fair Use

- Commercial
- Entertainment
Purpose and Character of Use

- Transformative Factor (added by Court in Acuff-Rose)
  - Create something new vs. verbatim copying
  - Add new expression or meaning
  - Value added with new information, new look, new insights or understanding

- Examples:
  - Alice Randall’s *The Wind Done Gone*

- Scholarship, research, and educational purposes may be transformative uses because of review and commentary
## Nature of the work

<table>
<thead>
<tr>
<th>+ Fair Use</th>
<th>- Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Factual</td>
<td>□ Imaginative work (fictional, creative, such as films, art, plays, music)</td>
</tr>
<tr>
<td>□ Published work</td>
<td>□ Unpublished</td>
</tr>
<tr>
<td></td>
<td>□ Drafts, notes, letters, diaries, etc.</td>
</tr>
</tbody>
</table>
Amount of Work

+ Fair Use
- Small amount
- Section used is not central to the work
- Using minimum of what is needed from the work

- Fair Use
- The whole work
- Whatever amount is used is central to the work
## Effect of Use on the Market

<table>
<thead>
<tr>
<th>+ Fair Use</th>
<th>- Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchased a copy of the original work</td>
<td>Your creation competes with sales of use of the original</td>
</tr>
<tr>
<td>Possess own lawfully acquired copy of the work</td>
<td>Avoids payment for permission in an established permissions market</td>
</tr>
<tr>
<td>Use has no significant effect on the market</td>
<td>Your use impairs market or potential market of copyrighted work</td>
</tr>
<tr>
<td>No licensing mechanism</td>
<td>Licensing mechanism is available</td>
</tr>
<tr>
<td></td>
<td>Seeking permission was affordable</td>
</tr>
<tr>
<td></td>
<td>Your work placed on Web or made web accessible</td>
</tr>
<tr>
<td></td>
<td>Your use is long term or repeated</td>
</tr>
</tbody>
</table>
Effect of Use on the Market

- The De Minimis Defense
  - Amount copied is too small to constitute infringement
    - E.g. – movie “Seven” used photos in screen shot. Not infringement – viewed briefly, out of focus and unidentifiable (Sandoval v. New Line Cinema Corp. (2d. Cir. 1998))
    - But 27 seconds of poster on TV show “Roc” not de minimis because clearly visible. (Ringgold v. Black Entertainment Television, Inc. (2d Cir. 1997))
Other campus copyright issues

- **Blogs and Wikis**
  - What responsibility does the university have for content posted on university-sponsored blogs and wikis?
  - Copyright infringement, defamation, invasion of privacy are all potential claims.
  - Encourage faculty to post parameters for posting and to review content periodically.
  - Permission to use student copyrighted work beyond class in which created

- **Streaming video for educational purposes**
  - Classroom exception, TEACH Act, Fair Use
  - Require password, take down when done (minimum at semester end), use only amount needed, must relate to course — not just entertainment
Other campus copyright issues

- Use of Social and Digital Media in class, lecture capture
  - Copyright and Privacy issues
- Note sharing/selling online
- Releasing software under open source licenses
Questions?

- We’re happy to help!
- Contact information:
  
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  263-7400