Talking About Your Research:
Copyright Do’s and Don’ts

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UIC Institute for Health Research and Policy
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Intellectual Property

- Copyright: Expression of ideas in a fixed medium
- Patent: Inventions
- Trademark: Sign or logo for products or services
Copyright Act of 1976

- **Copyright Rights**
  - copy
  - distribute
  - derivative works (book → movie)

- **Use of Copyrighted Works**
  - commentary
  - parody
  - limited educational use
  - read a book
  - see a movie
  - watch Sox at Fenway
  - borrow book from library

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Erik J. Heels

Exclusive rights of the creator

(1) to reproduce the copyrighted work in copies or phonorecords;

(2) to prepare derivative works based upon the copyrighted work;

(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;

(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and

(6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

17 USC § 106. Exclusive rights in copyrighted works
http://www.copyright.gov/title17/92chap1.html#106
Derivative Works. . .

“A 'derivative work' as a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgement, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, or other modifications which, as a whole, represent an original work of authorship, is a 'derivative work'.”

Recreating or Modifying Previous Publications

May be viewed as creating a derivative work, and...

• Copyright law protects “original works of authorship” and guarantees the creator the exclusive right to any derivative works.

• Derivative works = content produced from the original

• Seek permission from the rights holder
What is “Fair Use”? 

Section 107 of the U.S. copyright law that outlines the limited use or reproduction of copyrighted content without seeking permission from the rights holder.

Essentially, section 107 places some limitations upon the copyright holder’s exclusive rights described in Section 106. Note that Fair Use is NOT automatic, even when using content to meet educational objectives.

Fair Use: Four Factors = Balance

"Brass scales with flat trays balanced" by Toby Hudson - Own work. via Wikimedia Commons
http://commons.wikimedia.org/wiki/Category:Balance_scales#mediaviewer/File:Brass_scales_with_flat_trays_balanced.png
## Purpose (Factor 1)

<table>
<thead>
<tr>
<th>Focusing Fair Use</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Teaching, Research, Scholarship</td>
<td>Commercial activity</td>
</tr>
<tr>
<td>Criticism, Comment, News Reporting</td>
<td>Profiting from the use</td>
</tr>
<tr>
<td>Transformative or productive use (changes the work for new utility)</td>
<td>Entertainment</td>
</tr>
<tr>
<td>Restricted access (to students or other appropriate group)</td>
<td>Bad Faith Behavior</td>
</tr>
<tr>
<td>Parody</td>
<td>Denying credit to original author</td>
</tr>
</tbody>
</table>
## Nature (Factor 2)

<table>
<thead>
<tr>
<th>Favoring Fair Use</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Published work</td>
<td>Unpublished work</td>
</tr>
<tr>
<td>Factual or nonfiction based</td>
<td>Highly creative work (art, music, novels, films, plays)</td>
</tr>
<tr>
<td>Important to favored educational objectives</td>
<td>Fiction</td>
</tr>
</tbody>
</table>
# Amount (Factor 3)

<table>
<thead>
<tr>
<th>Favoring Fair Use</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small Quantity</td>
<td>Unpublished Work</td>
</tr>
<tr>
<td>Portion use is not central or significant</td>
<td>Portion used is central or “heart” of the work, i.e., the best or most recognizable part</td>
</tr>
<tr>
<td>Amount is appropriate for favored educational purpose</td>
<td></td>
</tr>
</tbody>
</table>
## Effect (Factor 4)

<table>
<thead>
<tr>
<th>Favoring Fair Use</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>User owns lawfully purchased or acquired copy of original work</td>
<td>Could replace sale of copyrighted work, i.e., numerous copies made</td>
</tr>
<tr>
<td>One or few copies made</td>
<td>Significantly impairs market or potential market for copyrighted work or derivative</td>
</tr>
<tr>
<td>No significant effect on the market or potential market for copyrighted work</td>
<td>Reasonable available licensing mechanism for use of the copyrighted work</td>
</tr>
<tr>
<td>No similar product marketed by the copyright holder</td>
<td>Affordable permission available for using work</td>
</tr>
<tr>
<td>Lack of licensing mechanism, i.e., there is no platform available to license or provide access to the content</td>
<td>Made accessible via Web or public forum</td>
</tr>
<tr>
<td></td>
<td>Repeated or long-term use</td>
</tr>
</tbody>
</table>
Fair Use Online Tool

What this tool can do for you:

- Help you better understand how to determine the “fairness” of a use under the U.S. Copyright Code.
- Collect, organize & archive the information you might need to support a fair use evaluation.
- Provide you with a time-stamped, PDF document for your records, which could prove valuable, should you ever be asked by a copyright holder to provide your fair use evaluation and the data you used to support it.
- Provide access to educational materials, external copyright resources, and contact information for copyright help at local & national levels.

What this tool cannot do for you:

- This tool does not provide legal advice. It records the information you provide it as well as your own judgment on the fairness of the use. See the tool instruction for more information.
- Only a court of law can definitively rule on whether a use is fair or unfair. This tool does not assume or predict a court outcome.

Provided by Copyright Advisory Network: http://librarycopyright.net/wordpress/
Fair Use Online Tool: http://librarycopyright.net/fairuse/
Presenting your work

FIRST, LET'S EXAMINE FAIR USE...

THIS IS SUCH GREAT STUFF!
Conference Presentations

- Do you own the rights to all of the content in the presentation?
- Does the material qualify under fair use?
- Check the conference agreement
  - Does the association appropriate the copyright of papers as a condition of presenting?
  - Do the terms specify some archival use or distribution of the presentation post conference?
Display vs. Handouts

• If you own the rights to all of the content, you may display and produce whatever you like for handouts and supplementary materials.

• If you intend to use the copyrighted content of others, run the fair use test.

• If the materials do not qualify under fair use, do not use the content — direct users to the original source or request permission.
Webinars

• More often than not, webinars are recorded for future use
• When you create or own rights to the content, no permission or fair use analysis is required
• If the presentation contains the copyrighted content of others and is not a fair use, request permission from the rights holder
Manuscripts

• Articles: for pre-publication materials, check the journal’s pre-print policy:
  – SHERPA/RoMEO
  
  http://www.sherpa.ac.uk/romeo/

• Books: review the agreement set forth by the publisher, and note that terms will vary

• Does the use jeopardize publication prospects?
Data, Facts, Tables, and Copyright

• Because copyright law was created “to promote the progress of science and useful arts,” data and facts are not protected by copyright law.

• But, how an author decides to select, arrange, or represent that data may be considered a creative act and can be copyrighted, e.g., charts, tables, graphs, databases.

• Link to the source, request permission, or create your own representation of the data.
Screenshots of tables and charts

- Like other forms of content, screenshots are subject to fair use.
- Perform a fair use analysis on the image to determine if fair use applies.
- Consider using links for handouts and supplementary content.
Excerpts from copyrighted content

• Excerpts are small amounts (Factor 3 of the fair use test) and typically can be good candidates for fair use when all four factors are applied

• Plagiarism is often unintentional — remember to cite excerpts and quotes properly
Permission is needed . . .

- If the content does not qualify for fair use
- When preparing content for publication
- If materials will be posted or distributed after a conference
- For copyrighted content that will be used in recorded sessions
Whose permission counts?

Author vs. Publisher
Neither! And both. . .

- Seek permission from the *Rights Holder*
- Remember that sometimes the author may not be the copyright holder
- The practice of surrendering copyright upon publication is prevalent in scholarly communication, so retain your rights
## Creative Commons

<table>
<thead>
<tr>
<th>CC License</th>
<th>Features</th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="cc_license_by.png" alt="Attribution" /></td>
<td>Attribution: distribute, remix, tweak, and build upon work, even commercially, and credit the original creation</td>
</tr>
<tr>
<td><img src="cc_license_by_sa.png" alt="Attribution-ShareAlike" /></td>
<td>Attribution-ShareAlike: remix, tweak, and build upon work, even for commercial purposes; credit original and license new works under the identical terms</td>
</tr>
<tr>
<td><img src="cc_license_by_nd.png" alt="Attribution-NoDerivs" /></td>
<td>Attribution-NoDerivs: redistribution, commercial and non-commercial, unchanged, credit original</td>
</tr>
<tr>
<td><img src="cc_license_by_nc.png" alt="Attribution-NonCommercial" /></td>
<td>Attribution-NonCommercial: remix, tweak, and build upon your work non-commercially</td>
</tr>
<tr>
<td><img src="cc_license_by_nc_sa.png" alt="Attribution-NonCommercial-ShareAlike" /></td>
<td>Attribution-NonCommercial-ShareAlike: remix, tweak, and build upon work non-commercially, credit original, license new works under identical terms.</td>
</tr>
<tr>
<td><img src="cc_license_by_nc_nd.png" alt="Attribution-NonCommercial-NoDerivs" /></td>
<td>Attribution-NonCommercial-NoDerivs: download and share works, credit original, non-commercial use, no remix or edits</td>
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Creative Commons, [https://creativecommons.org/](https://creativecommons.org/)
Public Domain

Works in the Public Domain may be used freely and without requesting copyright permission. With the exception of Government Documents, these materials generally become public property because of their age.

- Government Documents
- Works published in the United States before 1923
- Works published before 1964 but the copyright was not renewed *(Copyright renewal was required for works published before 1978)*
- Works published from 1923 through 1977 without a copyright notice
- Public Domain Slider: [http://librarycopyright.net/digitalslider/](http://librarycopyright.net/digitalslider/)

Adapted from: [http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter8/index.html](http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter8/index.html)
### Public Domain Slider

**Directions:**
- Set arrow at correct date
- Read information in windows
- Mouse-over asterisks [*] for clarifying information

### Is it Protected by Copyright?
**For works first published in the U.S.A.*

<table>
<thead>
<tr>
<th>No</th>
<th>Permission Needed?</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Copyright Status/Term</th>
<th>In Public Domain</th>
</tr>
</thead>
</table>

#### Date of First Publication

<table>
<thead>
<tr>
<th>Before 1923</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Between 1923-1977</td>
<td>If published without © notice</td>
</tr>
<tr>
<td>Between 1923-1963</td>
<td>If published with © notice, but not renewed after 28 years</td>
</tr>
<tr>
<td>Between 1978-March 1, 1989</td>
<td>If published without © notice but renewed; or published with © notice</td>
</tr>
<tr>
<td>After March 1, 1989</td>
<td>Published with or without © notice</td>
</tr>
<tr>
<td>Published after 2002</td>
<td>Author living or died in the last 70 years</td>
</tr>
<tr>
<td>Created before 1979 and author died more than 70 years ago</td>
<td>Author died more than 70 years ago</td>
</tr>
</tbody>
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*Public Domain Slider: [http://librarycopyright.net/digitalslider/](http://librarycopyright.net/digitalslider/)*
Social Media Bandwagon

Social Networking: Google Image Search Screenshot
Social Media Explained (w/Donuts)

Twitter: I am eating a #donut
Facebook: I like donuts
Foursquare: This is where I eat donuts
Instagram: Here’s a vintage photo of my donut
YouTube: Watch me eating a donut
LinkedIn: My skills include donut eating
Pinterest: Here’s a donut recipe
Last.fm: Now listening to “donuts”
Google+: I am a Google employee who eats donuts

Please reshare! JeffHester.net

Jeff Hester – http://jeffhester.net/2013/03/19/social-media-explained-with-donuts/
Facebook Terms of Use

“...You grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook (IP License). This IP License ends when you delete your IP content or your account unless your content has been shared with others, and they have not deleted it.”

Facebook Statement of Rights and Responsibilities, Section 2: https://www.facebook.com/legal/terms
“...By submitting, posting or displaying Content on or through the Services, you grant us a **worldwide, non-exclusive, royalty-free license (with the right to sublicense)** to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods (now known or later developed).”
“Instagram does not claim ownership of any Content that you post on or through the Service. Instead, you hereby grant to Instagram a non-exclusive, fully paid and royalty-free, transferable, sub-licensable, worldwide license to use the Content that you post on or through the Service, subject to the Service's Privacy Policy...”
“You hereby grant YouTube a **worldwide, non-exclusive, royalty-free, sublicenseable and transferable license to use, reproduce, distribute, prepare derivative works of, display, and perform the Content in connection with the Service and YouTube's (and its successors' and affiliates') business, including without limitation for promoting and redistributing part or all of the Service (and derivative works thereof) in any media formats and through any media channels.**”
“…copy, prepare derivative works of, improve, distribute, publish, remove, retain, add, process, analyze, use and commercialise, in any way now known or in the future discovered…”

LinkedIn applies this claim not only to users content, but also all data, concepts or even ideas\(^1\) passed through their service.

\(^1\)Ideas cannot be copyrighted – (17 U.S.C. § 102(b)) http://www.copyright.gov/title17/92chap1.html#102
Noticing a theme?

• Social Media providers claim a non-exclusive worldwide license to use, make derivatives, and distribute Content when you join the service

• Do you own the rights to content you post to social media websites?

• Is the content in the public domain?
When posting online...

- Assess why you are posting the content online
- Posting a sample may be better than providing the complete work
- Remember that it is difficult to retain control of your content
- Not everyone will provide proper attribution and credit to the original author
It’s your work…

Retrieved from http://www.picturesinboxes.com/2014/01/01/internet/
Isn’t it?

Retrieved from http://www.picturesinboxes.com/2014/01/01/internet/
Plagiarism (Cite the source!)

Plagiarism:
When you use something without a citation and present it as your own

Copyright Infringement:
When you use something without permission

Ethical

Legal

Both: When you use something without permission and pass it off as your own work

Wikipedia User: MLauba
http://en.wikipedia.org/wiki/File:Plagiarism_vs_Copyright_Infringement.png
Thank you!

Questions about copyright and scholarly communication?

Please email Copyright@uic.edu.