Fair Use in Education

Kathleen Ludewig
SI 519/PubPol 688
November 7, 2008
Outline

• What is Fair Use?
• Coursepacks
• Course Management Systems
• Open Educational Resources
• A world without Fair Use?
• Recommendations
Fair Use – What is it?

• Origin: Folsom v. Marsh (1841)
• Legislation: Copyright Act of 1976, Section 107

Four Factors

• Purpose and character of use
• Nature of the copyrighted work
• Amount or substantiality of copyrighted work
• Effect on market of copyrighted work
# Coursepacks: Relevant Cases

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Purpose &amp; character of use</td>
<td>Commercial</td>
<td>Commercial</td>
</tr>
<tr>
<td>Nature of original</td>
<td>Factual</td>
<td>Creative</td>
</tr>
<tr>
<td>Amount of original used</td>
<td>5 – 25%</td>
<td>Most were 5% - 18%, one was 30%</td>
</tr>
<tr>
<td>Market effect on original*</td>
<td>Publishers and authors make significant income from licensing fees</td>
<td>Publishers and authors make significant income from licensing fees</td>
</tr>
</tbody>
</table>
## Coursepacks: Relevant Cases

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Purpose &amp; character of use</td>
<td>UNFAIR</td>
<td>FAIR</td>
</tr>
<tr>
<td>Nature of original</td>
<td>FAIR</td>
<td>UNFAIR</td>
</tr>
<tr>
<td>Amount of original used</td>
<td>UNFAIR</td>
<td>FAIR</td>
</tr>
<tr>
<td>Market effect on original*</td>
<td>UNFAIR</td>
<td>FAIR</td>
</tr>
</tbody>
</table>
Coursepacks: Takeaways

• Is mechanical copying a use?
• Are publishers entitled by copyright law to licensing fees for excerpts used for classroom use?
Coursepacks: Takeaways

“The publishers must demonstrate a likelihood that MDS's use of the excerpts replaces or affects the value of the copyrighted works, not just that MDS's failure to pay fees causes a loss of fees, to which the plaintiffs may or may not have been entitled in the first instance.”

Fair Use – a little clarification, please?

CONFU

• Conservative interpretation
• Influence of publishers

TEACH Act (2002)
“There’s no photocopying for my classes; my materials are on CTools”

What is CTools?

CTools is an advanced web-based course and collaboration environment. It is a set of tools designed to help instructors, researchers and students create course websites and project websites.

Source: https://ctools.umich.edu/portal
Sakai/CTools: Default method

Resources

Upload Files

Upload as many files as you like. If you change your mind about uploading one of your files, click the 'X' button beside it. Press the button when you have selected all the files you want to upload.

Location: 32727ef2-813f-43c0-a418-d15b6e470888 /

File To Upload

Display Name

Add Another File

Email Notification

None - No notification

Upload Files Now    Cancel

Source: https://ctools.umich.edu/portal
Sakai/CTools: CONFU-Friendly Method

Resources

Upload Files

Upload as many files as you like. If you change your mind about uploading one of your files, click the 'X' button beside it. Press the 'Upload' button when you have selected all the files you want to upload.

Location: 32727ef2-813f-43c0-a418-d15b6e470888 /

File To Upload

Display Name

Description

Copyright Status

Material is in public domain.

Copyright Alert

Display copyright alert and require acknowledgement when accessed by others.

Availability and Access

Choose who can see this item.

- Only members of this site can see this file.
- This file is publicly viewable.

Source: https://ctools.umich.edu/portal
Sakai/CTools: CONFU-Friendly Method

Copyright Status
- Material is in public domain.

Copyright Alert
- Material is in public domain.
- I hold copyright.
- Material is subject to fair use exception.
- I have obtained permission to use this material.
- Copyright status is not yet determined.
- Use copyright below.

Availability and Access
Choose who can see this item.

Copyright Restriction Download Warning

Title: Frankel - Willing Partner - Tech Review jul 05.pdf

Copyright:
- You may download or copy this file for use here.
- You may NOT download or copy this file to another site.
- You may NOT download or copy this file for publication or sale.

Source: https://ctools.umich.edu/portal
How does this affect Open Educational Resources (OER, including OCW)?

• Clearing process -> copyright education and replacement
• Is this process really necessary?
• What if we can’t find a replacement image licensed through Creative Commons?
• What is the risk of using copyrighted work?
Slide Source: Hidden Action I Lecture from SI 680 by Jeff MacKie-Mason

reputation
A world without fair use?
Unconstitutional?
Why do we have copyright?

• Statute of Anne (1709)

“The Encouragement of Learning”

Source: Copyright Act 1709

• Progress Clause

“To Promote the Progress of Science and the...

Source: U.S. Constitution Article I, Section 8, Clause 8
But we still want people to maintain the *incentive to create and publish* innovative scholarly works.
Recommendations for U-M

• Educate students and faculty about copyright alongside plagiarism
• Add copyright information to resources on CTools
• Cite sources of all content in presentations – copyrighted, public domain, CC
• When articles are available through library subscriptions, make it easier to the original (instead of posting on PDF on CTools)
• “Be nice.” – Brewster Kahle, U-M Talk, 10/22/08
• Push for clarification of current Fair Use ambiguities
• Radical Idea: Nonprofit or university-owned copy-shop
These guidelines work for documentary filmmakers – why not educational institutions?

• [http://centerforsocialmedia.org/resources/online_video](http://centerforsocialmedia.org/resources/online_video)
• Less restrictive than CONFU
• Trump card: *Transformative* use
Sources

• http://www.copyright.iupui.edu/FUsummaries.htm
• http://www.bc.edu/bc_org/avp/cas/comm/free_speech/basicbooks.html
• http://copyright.umich.edu/using_copyrighted_material.html
http://www.utsystem.edu/ogc/intellectualproperty/michigan.htm
• http://centerforsocialmedia.org/resources/online_video
• http://www.law.cornell.edu/copyright/cases/99_F3d_1381.htm
• http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter9/
• http://www.centerforsocialmedia.org/resources/fair_use/
• https://open.umich.edu/wiki/index.php5/Fair_use
• http://cyber.law.harvard.edu/node/4376
• http://www.copyright.com/media/pdfs/CR-Teach-Act.pdf
Disclaimer

• No copyright was infringed in the production, distribution, or public performance of this presentation
Questions?

IT'S NOT JUST THE ECONOMY, STUPID: LINKING FREE TRADE AND THE WAR ON TERROR

Dr. David Auerswald and Ms. Caroline Shaver

COPYRIGHTED MATERIAL
Do Not Duplicate — This is Copyrighted Material for Classroom Use.
It is available only through the Institute for the Study of Diplomacy.
202-965-5735 (tel) 202-965-5811 (fax)

© The Institute for the Study of Diplomacy