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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

Factor	Basic Books, Inc. v. Kinko's Graphics Corp., (S.D.N.Y. 1991)	Princeton University Press v. Michigan Document Services, Inc., (6th Cir. 1996)
Purpose & character of use	Commercial	Commercial
Nature of original	Factual	Creative
Amount of original used	5 – 25%	Most were 5% - 18%, one was 30%
Market effect on original*	Publishers and authors make significant income from licensing fees	Publishers and authors make significant income from licensing fees

Coursepacks: Relevant Cases

Factor	Kinkos (1991)	MDS (1996)
Purpose & character of use	UNFAIR	FAIR
Nature of original	FAIR	UNFAIR
Amount of original used	UNFAIR	FAIR
Market effect on original*	UNFAIR	FAIR

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'suse 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."

Source: Princeton University Press v. Michigan Document Services, Inc., (6th Cir. 1996)

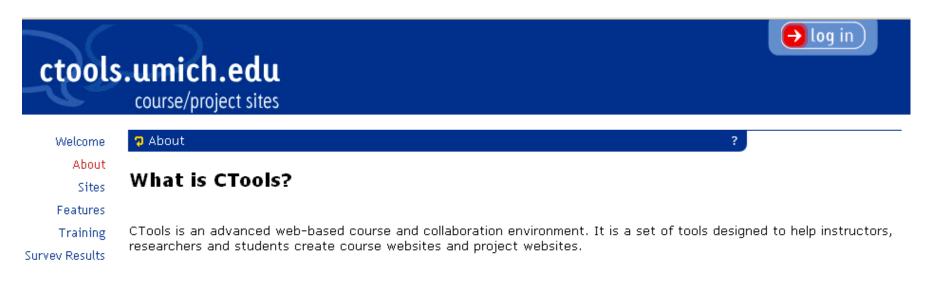
Fair Use – a little clarification, please?

CONFU

- Conservative interpretation
- Influence of publishers

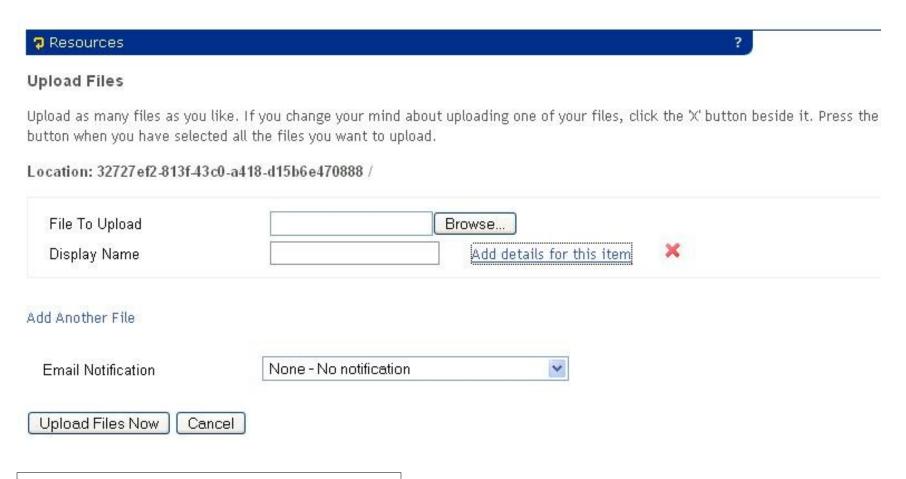
TEACH Act (2002)

"There's no photocopying for my classes; my materials are on CTools"



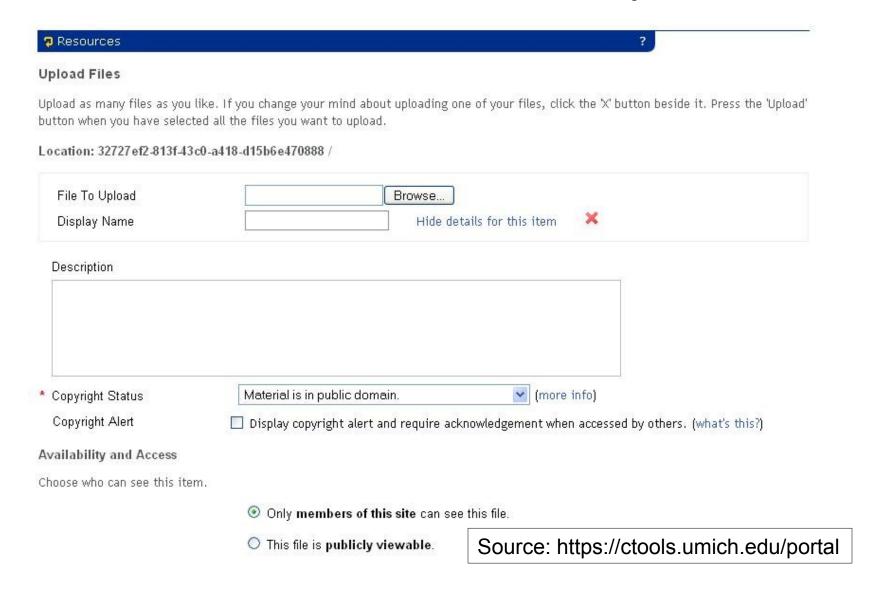
Source: https://ctools.umich.edu/portal

Sakai/CTools: Default method



Source: https://ctools.umich.edu/portal

Sakai/CTools: CONFU-Friendly Method



Sakai/CTools: CONFU-Friendly Method

* Copyright Status

Copyright Alert

Copyright Alert

Availability and Access

Choose who can see this item.

Material is in public domain.

I hold copyright.

Material is in public domain.

I ho



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?

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Slide Source: Hidden Action I Lecture from SI 680 by Jeff MacKie-Mason

reputation



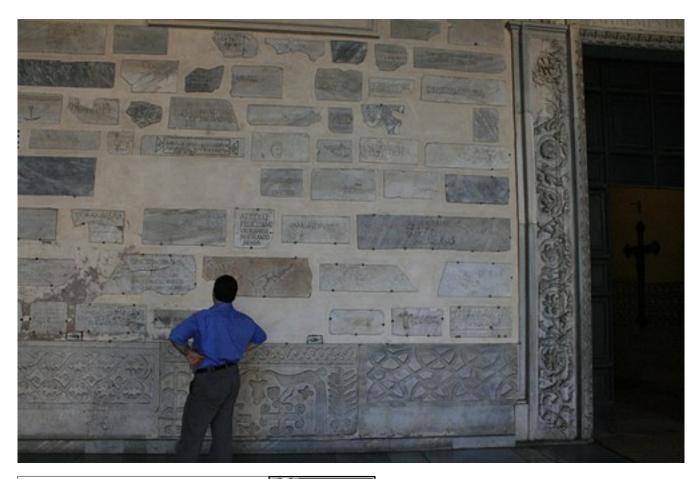
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A world without fair use?

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http://creativecommons.org/licenses/by/2.0/deed.en



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
- 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/chapter9/9
- 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

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Questions?

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

Dr. David Auerswald and Ms. Caroline Shaver

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