NAVIGATING THE COPYRIGHT MAZE

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NJECC Conference, January 9, 2018
OBJECTIVES FOR THIS WORKSHOP

1. Know and use the four factors to determine Fair Use
2. Identify strategies to abide by copyright law
3. Understand how copyright laws affect students and teachers

WARNING: The following presentation uses copyright protected materials used under the Multimedia guidelines and fair use exemptions of the U.S. Copyright Law.
A Fair(y) Use Tale

www.youtube.com
“The Congress shall have power...
To promote the Progress of Science and useful arts,
by securing for limited times to Authors and Inventors
the exclusive Right to their respective Writings and Discoveries”.
What is Copyrightable?

If the work is original and fixed in any tangible medium of expression.

But not ideas, procedures, processes, systems, concepts...
WHAT IS COPYRIGHTABLE?

- Literary works
- Musical works
- Dramatic works
- Pantomimes and choreographic works
- Pictorial, graphic and sculptural works
- Sound recordings
- Motion pictures and other audiovisual works
- Architectural works
“The primary objective of copyright is not to reward the labor of authors, but to promote the Progress of Science and useful Arts. To this end, copyright assures authors the right to their original expression, but encourages others to build freely upon the ideas and information conveyed by a work. This result is neither unfair nor unfortunate.”
Why comply?

- It’s the Law!
- Model appropriate behavior for students
- Personal ethics
- Impact on future creative development
- Avoid potential embarrassment or legal actions
Myths about Copyright

- If it doesn’t have a copyright notice, it’s not copyrighted.
- If I don’t charge for it, it’s not a violation.
- If it’s posted to the Internet, it’s in the public domain.
- It doesn’t hurt anybody—in fact it’s free advertising.
- They emailed me a copy, so I can post it.

Templeton, B. (http://www.templetons.com/brad/cop hymyths.html)
U.S. Copyright History

1976 – Copyright Act, effective, 1978

1998 – Digital Millenium Copyright Act
- Provided new & clarified rules with regard to copyright, such as ISPs are generally not liable for user’s copyright infringing behavior and expanded library rights to make archival digital copies of out-of-print works

2002 – TEACH Act (Technology Education & Copyright Harmonization Act)
- Intended to update distance education provisions due to advancements in digital transmissions
COPYRIGHT ACT OF 1976

Section 102 – Defines types of protected works
Section 106 – Rights of Copyright Owners
Section 107 – establishes limitations on the exclusive rights of copyright owners in a concept known as “fair use”
Section 108 – Library Exemptions
Section 109 – First Sale Doctrine
Section 110 – Classroom Exemptions for performance and display
Section 302 – Term of Copyright
Section 504 - Damages
**Fair Use**

- Definition – A legal principle that defines the limitations on exclusive rights of copyright holders.
- No simple test; Section 107 of the Copyright Act identifies four factors to determine whether a use is a “fair use.”
- Fair use allows for criticism, comment, news reporting, teaching, scholarship, and research.
1. The purpose and character of use – including whether such use is of a commercial nature or is for nonprofit educational purposes.
2. The nature of the copyrighted work.
Fair Use Factors

3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole.
FAIR USE FACTORS

4. The effect of the use upon the potential market for or value of the copyrighted work.
Court cases have established the principle that:

1. Fair use calls for case-by-case analysis.
2. None of the factors alone is enough to tip the argument in favor or against favor of Fair Use.
3. The 4 factors **must be examined in total** with the results weighed together, in light of the purposes of copyright.

(Campbell v. Acuff-Rose, 510 U.S. 569, 1994)
COPYRIGHT CONTINUUM

Works in the public domain  
Works of the federal government  
Out-of-print works

Safer

Last copies  
Factual works

Works under license or contract restrictions  
Works commercially available elsewhere in digital form  
Fictional works  
Works of state or local government  
Riskier
REASONABLE GOOD FAITH FAIR USE DEFENSE

Section 504(c)(2) of the Copyright Act says that employees of nonprofit educational institutions who are found by the court to violate copyright cannot be held liable for statutory damages if the court believes the employee had made a reasonable good faith decision that their use of the material was covered under Fair Use.
COPYRIGHT RESOURCES
10 Big Myths about Copyright

Brad Templeton's essay about 10 copyright myths, from "If it doesn't have a copyright notice it's not copyrighted," to "It doesn't hurt anybody, in fact it's free advertising."

Checklist for Conducting a Fair Use Analysis of Copyrighted Materials

Looking at the four factors of Fair Use (purpose, nature, amount and effect on the market) can help you determine if a use is fair, or if you should seek permission before copying. Part of the Cornell Copyright Information Center.

Copyright

The Copyright website from the American Library Association (ALA) is focused primarily on copyright related legislative issues from anti-piracy legislation to the TEACH Act. It also provides Copyright Tools that assist in determining copyright status, evaluating Fair Use criteria and other online tools.

Copyright Term and the Public Domain in the United States

This guide, divided by types and formats, can help determine if a work is in the public domain. Part of the Cornell Copyright Information Center.

Educator's Guide to Copyright and Fair Use

Five part series of lessons about Copyright and the application of Fair Use in schools. Includes links to the Fair Use Guidelines for Educational Multimedia. Developed by Education World.

How to Investigate the Copyright Status of a Work

This 12-page publication from the U.S. Copyright Office explains the strategies for investigating the copyright status of a work.
The school library media center purchased a DVD copy of the Shakespearian play, “Much Ado About Nothing.” The 10th grade English teacher wants the SLMS to put it on the school’s server for her English classes to watch it so she doesn’t use up class time showing the entire video. Should the SLMS do this?
A teacher wants to use a song from a Ray Charles album as a background in playing a slide show of her students’ work on her class website. The class website is available through the school website. Should the teacher do this?
A bulletin board is being prepared to showcase some new titles that may be of interest to the children. Should the librarian make copies of the book covers and display on the board?
There is an article that may be of interest to the teachers/staff in the school or library. Should the librarian scan the article and attach it in an email to the staff?
BE INFORMED!

- Know what your license agreements allow
- Know what can be password protected on the school’s website
- Know the level of your Board of Education’s tolerance for risk
IN CLOSING

Be a resource to help your school abide by copyright law!
QUESTIONS?

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