INTELLECTUAL PROPERTY FOR FACULTY

Copyright Issues in Scholarship and the Classroom

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Copyright for Faculty

- Copyright Basics
- Faculty as Scholars:
- Faculty as Teachers:
- Copyright for Faculty: Some Resources
Copyright Basics

- Copyright Act of 1976
  - What is copyright (17 U.S.C. 106)
  - What types of works are copyrightable? (17 U.S.C. 102)
  - How do we determine who the copyright holder is?
    - A brief explanation of the work-for-hire doctrine (17 U.S.C. 101)
  - What are the relevant exceptions to copyright?
    - Fair Use (17 U.S.C. 107)
    - Educational Use (17 U.S.C. 110)
The owner of copyright . . . has the exclusive rights to do and to authorize any of the following:

1. to reproduce the copyrighted work . . . ;
2. to prepare derivative works . . . ;
3. to distribute . . . the . . . work to the public by sale . . . , or lending;
4. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the . . . 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 . . . work publicly; and
6. in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.
Copyright protection subsists . . . in original works of authorship fixed in any tangible medium of expression. . . . Works of authorship include the following categories:

(1) literary works;
(2) musical works, including any accompanying words;
(3) dramatic works, including any accompanying music;
(4) pantomimes and choreographic works;
(5) pictorial, graphic, and sculptural works;
(6) motion pictures and other audiovisual works;
(7) sound recordings; and
(8) architectural works.
Generally, the *initial* owner of the copyright is the author. 17 U.S.C. 201(a)

But, under the work-for-hire doctrine, an employer or one who commissioned the work may be the author under the statute. 17 U.S.C. 201(b)
A “work made for hire” is—

(1) a work prepared by an employee within the scope of . . . employment; or

[T]he fair use of a copyrighted work, including such use by reproduction . . . , for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
(2) the nature of the copyrighted work;
(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
(4) the effect of the use upon the potential market for or value of the copyrighted work.
The following is not an infringement of copyright:

(1) performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made;
The following is not an infringement of copyright:

(2) the performance of a nondramatic literary or musical work or reasonable and limited portions of any other work, or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session, by or in the course of a transmission, if—

(A) made under the supervision of an instructor at an accredited nonprofit educational institution; and

(B) directly related and of material assistance to the teaching content; and

(C) reception is limited to enrolled students; and

(D) the institution demonstrates compliance with U.S. copyright law and, as to digital transmissions, takes appropriate technological measures to demonstrate such compliance.
What do you own?

- Are you the author?
  - The work-for-hire doctrine, as applied
  - Ohio Northern University’s relevant policies

Using the work of others without infringing:

- The fair use doctrine, as applied
- Ohio Northern University’s relevant policies
Faculty members are expected to adhere to applicable copyright law in their teaching, research, and professional activities.

Full-time Faculty Handbook 2.3.3(J)
Faculty as Scholars: ONU Policies

Except as otherwise provided . . ., in keeping with academic tradition, a faculty . . . member shall retain all rights in the creation of the following types of copyrightable works, regardless of the amount of use of University Facilities to create such works, and the University and the faculty . . . member hereby expressly agree that such creative works shall not be deemed to be a "work made for hire" under the Copyright Act of 1976. . . .

Full-time Faculty Handbook 2.15.4
Such creative works shall not be deemed to be a "work made for hire" under the Copyright Act of 1976: books, including textbooks and manuals; educational course materials; articles; nonfiction; novels, poems, musical works, dramatic works, including accompanying music; pantomimes and choreographic works, pictorial, graphic and sculptural works; motion pictures and other audio-visual works; and sound recordings.
Computer software developed in connection with any of these works also shall not be treated as a work for hire. Such faculty ... member shall be responsible for securing a registration for such copyrightable works. ...
Computer software developed in connection with any of these works also shall not be treated as a work for hire. Such faculty ... member shall be responsible for securing a registration for such copyrightable works. ...
Faculty as Scholars: Licensing Resources

- Bargaining for Better Publication Agreements
- Manage Your Copyrights
- Creative Commons Licenses
Faculty as Teachers

- What do you own?
  - Are you the author?
    - The work-for-hire doctrine, as applied
    - Ohio Northern University’s relevant policies

- Using the work of others without infringing:
  - The educational exception, as applied
    - In online contexts
  - The fair use doctrine, as applied
  - Ohio Northern University’s relevant policies
Faculty members are expected to adhere to applicable copyright law in their teaching, research, and professional activities.

Full-time Faculty Handbook 2.3.3(J)
Such creative works shall not be deemed to be a "work made for hire" under the Copyright Act of 1976: books, including textbooks and manuals; educational course materials; articles; nonfiction; novels, poems, musical works, dramatic works, including accompanying music; pantomimes and choreographic works, pictorial, graphic and sculptural works; motion pictures and other audio-visual works; and sound recordings.

Full-time Faculty Handbook 21.15.4
Copyright for Faculty: Some Resources:

- Copyright Basics
- Educational Fair Use Guidelines
- Fact Sheet: Registering a Copyright with the U.S. Copyright Office
- Fact Sheet: How to Obtain Permission
Copyright for Faculty: Some Resources

- Copyright and Fair Use Guidelines for Teachers (Chart)
- The Information Network for Ohio Schools: Copyright in Education
- National Education Association: Intellectual Property
- American Association of University Professors: Intellectual Property Issues for Faculty
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