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Copyright Issues for Distance Education

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FLORIDA INTERNATIONAL UNIVERSITY

Copyright issues for Distance Education

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A really quick overview!

What We'll Cover

- Context: Copyright management in academia
- Copyright issues in remote teaching
 - What can be used?
 - How can it be used?
 - Any special caveats or conditions
- Relevant sections of US Copyright Law
- Questions, comments or concerns

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Copyright Management in Academia

- As Instructors
 - We use others' copyrighted works in our courses
 - We seek control/protection of our own course materials
- As scholars and creators
 - We use others' copyrighted works in our work
 - We seek control/protection of our own scholarly and creative works
- As Advisors
 - Our students use others' copyrighted works in their works
 - Our students seek control/protection of their own academic works

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Copyright Management in Academia

- How can we make use of others' intellectual property in a manner that best promotes quality teaching and scholarship?
- How can we in the university community hold and manage the rights to FIU-created intellectual property in a manner that best promotes quality teaching and scholarship?
- How do we, as faculty, hold rights to our instructional works, while allowing a sharing of rights to assure continued teaching, learning, research and creativity
- Even if IANAL, we can in develop effective strategies for managing the use of others' copyrighted materials and the control/dissemination of our own works

IANAL

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So, what stuff is copyrighted?

- Since 1976, copyright protection accrues to all original works of authorship that are fixed in a tangible medium
 - OPT out vs. OPT in
- Most writings, images, videos, sound recordings, artworks, computer programs, etc. are protected by copyright
 - Even tho' they do not bear a copyright notice
 - Even if they have not been registered with LOC
 - Even if the author wants us to use them

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Copyright in Distance Education

- We seek to use others' works in the course of teaching without asking permission or subject to a license agreement
- We can find legal support in the U.S. Copyright Law (Title 17 U.S.C.), which provides several limitations on the rights of copyright owners
- Whether our use is permissible under the provisions (and which provision applies)
DEPENDS on specifics

It Depends!

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Copyright and Distance Education

- A group of assembled students may constitute 'public' under the law
- Activities such as uploading works to websites or CMS, displaying slides in a PPT, or performing videos/sound recordings could infringe the copyright holders' exclusive rights
- Copyright Act of 1976 has allowed "performances" and "displays" in traditional classroom settings
- This provision has not automatically applied in Online Education because of perceived threats to copyright holders:
 - Online materials can be easily broadcast around the world;
 - Easily downloaded, altered and further transmitted beyond the life of the course

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A Distance Educator Could step on the exclusive rights of a copyright holder:

- Reading a story
 - Public performance of a non-dramatic literary work
- Showing a movie clip
 - Public performance of an audio-visual work
- Scan an article and upload to a course website
 - Reproduction; Display of non-dramatic literary work
- Dramatic re-enactment of a story
 - Make a derivative work

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Educators can find legal support in Title 17 U.S.C.

- Section 107: Fair Use
- Section 110: Classroom instruction
 - Section 110 (1) for face-to-face teaching
 - Section 110 (2) for distance education



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TEACH Act of 2002

- Technology, Education, and Copyright Harmonization Act signed into law November 2, 2002
- Focuses on display and performance of copyrighted materials in distance education
- Enables educators to use certain copyrighted materials under certain conditions without seeking permission and without paying royalties

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TEACH Act of 2002

- Vision of distance education as pretty similar to traditional classroom instruction
 - Discrete installments, like lectures
 - Course has distinct start and end
 - All course elements are integrated into sessions ("lectures") mediated by the Instructor
 - Not intended to cover distance support materials, just what is used in the class itself

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TEACH Act of 2002

- Selection of content to be performed/displayed:
 - Nondramatic literary works in their entirety
 - Reading a short story or journal article in class
 - Nondramatic musical works in their entirety
 - Singing a song or humming a melody in class
 - Any other work, including dramatic and audiovisual works, but only in "reasonable and limited portions"
 - Acting out select scenes from a play or showing a movie clip
 - Displays of work in an amount comparable to what would be displayed as part of a live classroom session
 - A table from an article on reserve

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TEACH Act of 2002

Excludes

- Materials unlawfully obtained
 - No bootleg copies
- Materials developed by another party specifically as digital distance education curricula

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TEACH Act of 2002

■ Instructor Oversight is Required:

- Performance/display made by, under supervision of, or at the direction of the Instructor
- Transmission occurs as an integral part of a class session
- Materials are directly related to the teaching content of the course
- Part of mediated instructional activities – an integral part of the class experience

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TEACH Act of 2002

■ Instructor may convert materials if:

- Limited to what is appropriate and necessary
- A digital version is not already available to the institution, or the digital version is secured behind technological protections that prohibit compliance with other elements of Section 110(2)

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TEACH Act of 2002

- Institution is responsible to:
 - Impose restrictions on access
 - Implement technological systems to curb retention and further dissemination of the copyrighted work (streaming)
 - Institute policies for campus-wide use
 - FIU has several copyrighted-related policies available in Compliance website
 - Disseminate meaningful copyright information to instructors, students, relevant staff
 - Provide notice to students that materials used in distance education may be subject to copyright protection

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TEACH Scenario

Dr. Smithbourne teaches a Human Behavior course in Social Work at an accredited university. The course is an online course accessed by enrolled students after they authenticate themselves with a user name and password. Dr. Smithbourne starts a bulletin board discussion of Bowen's Theory and uploads a streaming audio recitation of the first of Edwin H. Friedman's Fables "The Bridge" in its entirety. She asks the students to post their responses to three questions regarding this fable on the bulletin board.

Does Dr. Smithbourne qualify to do this under the TEACH Act?

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TEACH Scenario

Answer: Yes. The instructor is allowed to post a "performance" of a non-dramatic literary work in its entirety. The instructor has also made certain that performance is in streaming audio format, so it meets the reasonable technological measures to prevent copying and distribution.

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Beyond TEACH: Fair Use

- Case-by-case analysis is required for each copyrighted work
- Must assess all four factors:
 - the purpose and character of your use
 - the nature of the copyrighted work
 - the amount and substantiality of the portion taken, and
 - the effect of the use upon the potential market.
- Section 107 is purposefully vague: consult case law, not statute.

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Additional Resources

- Handout distributed today
- Digital Collections URL-odex
<http://digitalcollections.fiu.edu/links.htm>
- Contact information:
Gail Clement, University Librarian
Green Library, Digital Collections Center
Office phone: 305/348-6708 ; E-mail: clementg@fiu.edu
Hours by appointment

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Further information about the TEACH Act, Copyright and Distance Education

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Crews, Kenny, *The TEACH Act and some Frequently Asked Questions*, American Library Association, Online: <http://www.ala.org/ala/washoff/woissues/copyrightb/distanced/teachfaq.cfm>; ; last accessed 3-20-08.

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Lipinski, Tomas A., *Copyright Law and the Distance Education Classroom*, London: Scarecrow Press, 2005, 225 p. [FIU Library Reserve, KF4209 E38 L57 2005.](#)

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University of Texas, *Copyright Crash Course: The TEACH Act Finally Becomes Law*, Online, URL: <http://www.utsystem.edu/OGC/intellectualProperty/teachact.htm>; last accessed 3-20-08.

U.S. Senate, *S. 487, 107th Congress, 1st Session*, Online: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_bills&docid=f:s487es.txt.pdf; last accessed 3-20-08.

Washburn University, *TEACH Act Scenarios*, Online: <http://www.washburn.edu/copyright/faculty/teachact.html>; last accessed 3-20-08.

FIU Copyright Policies (Available online from the FIU Compliance website):

FIU Digital Millennium Copyright Act Policy, http://policies.fiu.edu/record_profile.php?id=545

FIU Internet Access Policy for University Libraries, http://policies.fiu.edu/record_profile.php?id=216

FIU Inventions and Works (UFF),
http://policies.fiu.edu/record_profile.php?id=204

FIU Works and Copyrightable Materials, http://policies.fiu.edu/record_profile.php?id=463