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Copyright for the digital classroom

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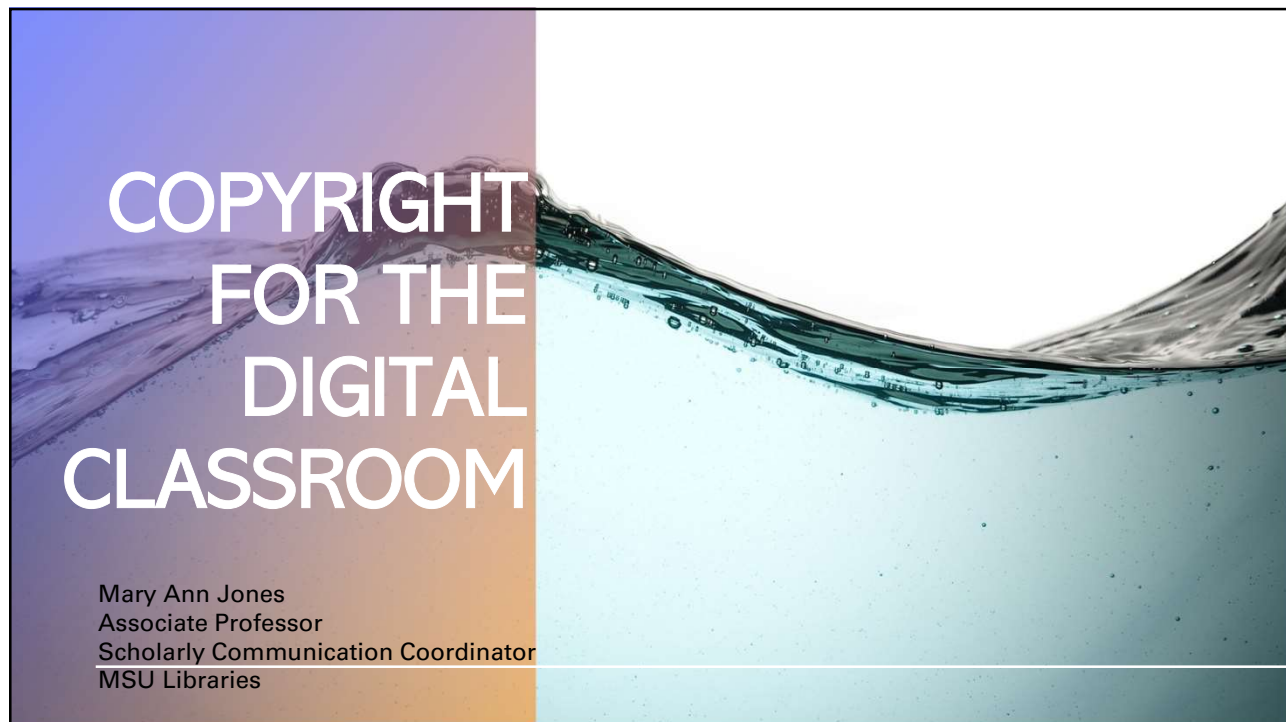
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1

Outline

- What is copyright?
- Why do we need copyright?
- Copyright exceptions
- Copyright policy at MSU
 - (OP 1.20)
- What is Fair Use?
- How to determine Fair Use
- DMCA and TEACH Act
- Myth busting
- Questions

2

What is copyright?

Dictionary.com: “the exclusive right to make copies, license, and otherwise exploit a literary, musical, or artistic work, whether printed, audio, video, etc.”

Copyright.gov: Copyright, a form of intellectual property law, protects original works of authorship including literary, dramatic, musical, and artistic works, such as poetry, novels, movies, songs, computer software, and architecture.”

In other words, 17 U.S.C. copyright law is U.S. federal law that gives you ownership over your creative material.

3

- As of 1/1/1978 copyright term is “Life + 70 years” of the author/creator
 - <https://librarycopyright.net/resources/digitalslider/index.html>
- Copyright does not have to be registered with the government to be valid
 - You created it, you own it
- How is a copyright different from a patent or a trademark?
 - Copyright protects original works of authorship
 - Patent protects inventions or discoveries
 - Trademark protects words, phrases, symbols, or designs identifying the source of the goods or services of one party and distinguishing them from those of others.
 - <https://www.copyright.gov/help/faq/faq-general.html>

4



Why do we need copyright?

- Protect creator's rights to their own work.
 - Monetization
 - Creativity
 - Control

5

Exceptions

- Why do we need exceptions?
 - Promote learning
 - Dissemination of knowledge
 - Adaptation
 - Replication

MSU policy

- OP 01.20: Use of copyrighted works for education and research
 - "facilitates the exercise in good faith of full **fair use rights**"
 - "furtherance of their teaching, research, and service activities"
 - "primary responsibility ... rests with the user of that content"
 - "If faculty and staff act in good faith ... MSU will offer protection in the event of an infringement allegation"

6

Fair Use - 17 U.S.C. §107

1. It's complicated!!
2. It's not one size fits all
3. It's vague (for a reason)
4. It's all relative
5. It's all about risk management

But . . .

6. It's a **right** and it's worth the effort!!

7

How to determine Fair Use

• **4 factors:** consider the following for each fair use claim

1. What is the purpose and character of the use?
2. What is the nature of the original work?
3. What is the amount and substantiality of the portion used?
4. What is the effect of the use on the potential market for the work?

8

What is the **purpose and character** of the use?

Consider the following when deciding the purpose:

- Are you using the work for educational or commercial benefit?
- Will the use be transformative or are you using the work verbatim or as an exact copy?
- Is there any social benefit to your use of the work?
- Will the work be used for profit?
- Will your use create a derivative?

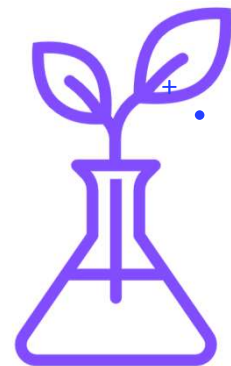


9

What is the **nature** of the original work?

Consider the following when deciding the nature:

- Is the work previously published?
- Does the work contain limited or significant new knowledge, content, or creative expression?
- Is the work primarily factual or is it of a highly creative nature such as art, music, drama, film, photography?
- Was the original created for the same purpose for which you plan to use it? (think textbooks)
- Is the work consumable? (think workbooks)



10

What is the **amount and substantiality** of the portion used? ⁺ •

Consider the following when deciding the amount:

- Is the amount of the work limited and reasonable or are you using the entire work or the “heart” of the work?
- Are you using **ONLY** what you need to achieve the objective?
- There are not definitive rules!!

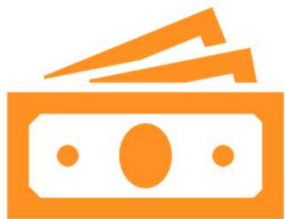


11

What is the effect of the use on the **potential market** for the work? ⁺ •

Consider the following when deciding the potential market:

- Is the work commercially available?
- Is there a current market for the work as it will be used?
- Will the use damage the potential market for the work?
- Are you using a legal copy?
- Are you using the work in a way that minimizes the potential for unauthorized use that may impact the value?



12

+ Digital Millennium Copyright Act (DMCA) and TEACH Act

DMCA (1998):

- Implemented 2 international treaties to protect intellectual property.
- Added a new chapter (12) to 17 U.S.C.
 - Adds protection against circumvention of technological measures used by copyright owners to protect their work
 - Makes a distinction between **access** and unauthorized **copying** of a copyrighted work

This distinction was added to provide continued ability to make **fair use** of copyrighted materials.

TEACH Act (2002):


- § 1 provides educators with a separate set of rights in addition to fair use, to display (show) and perform (show or play) others' works in the classroom, no matter the medium.
- § 2 limits those rights for online education to only what is "reasonable and limited portions" – so we're back to **fair use** for online display or performance!

13

Copyright Myths

- 10% rule – "I can legally copy 10% without it being infringement." + •
- I don't see a copyright notice © so it's not protected. ○
- Everything on the internet is public domain and free to use.
- It's OK to use, copy, or publish other peoples work if I don't make any money from it.
- Creative Commons overwrites copyright.
- I paid for it, so I can use it however I want.
- I can claim fair use for anything I use for my classroom.
- Fair Use is unreliable or too risky.
- If I put it behind a login, I can use whatever I want.
- I can use copyrighted material as long as I give the author full credit.

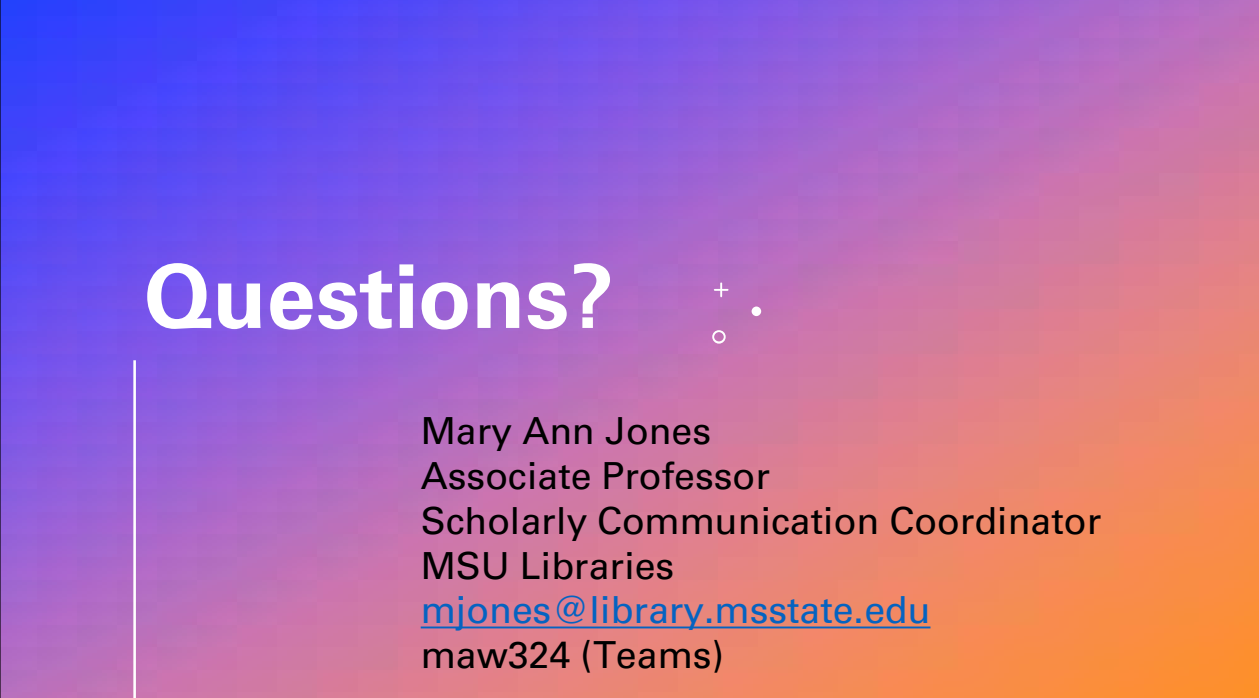
14



Helpful resources

- [American Library Association Copyright Genie](#)
- [American Library Association Copyright Tools](#)
- [American Library Association Fair Use Evaluator](#)
- [Know Your Copyrights chart](#)
- [MSU copyright policy](#)
- [MSU Libraries electronic reserves request form](#)
- [MSU Libraries' Fair Use page](#)
- [Patricia Aufderheide's Myths About Fair Use - Inside Higher Ed](#)
- [U.S. Copyright Office FAQs](#)

15



Questions?

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16