

FROM THE ROAD TO COPYRIGHT CLARITY
Questions and Answers from February 11, 2020

By Renee Hobbs

What is the purpose of copyright?

Answer: The purpose of copyright is to promote creativity, innovation and advance the spread on knowledge

Is VHS considered an obsolete format? Is LP vinyl an obsolete format? They are all still available for purchase, and you can find players, although it may not be as easy as buying and mp3 player. We have discussions on this all of the time.

Answer: VHS players/VHS decks are no longer being manufactured. The term obsolete is situational and contextual, and it may differ across libraries and communities,

Wondering what you thinking about Controlled Digital Lending being advocated by Internet Archive <https://controldigital.org/>

Answer: This impressive effort embraces digital lending as a natural extension of physical lending. Because digital rights management is used to prevent indiscriminate copying and redistribution, it seems fully protected under first sale doctrine, Section 109. Once you own a legal copy of a copyrighted work, you can lend it freely to others.

How do perceive using electronic reserves (Canvas, Blackboard) to allow the face to face use of materials scanned for scans made from either a personal, library or a consortium book?

Answer: Digital reserves are a great solution for both online and F2F learning. Sadly, Section 110(B) the Teach Act is unlikely to be relevant, but Section 107 fair use certainly applies, given its focus on uses for teaching, learning and scholarship. A key feature of this kind of digital sharing is that materials are placed on a delimited network, not the open Internet. Any legally-acquired materials could be used to support teaching and learning using electronic course reserves.

If writing a book for educational purposes, do we need to ask/pay for permission to use a chart or a term or can we just give credit to it?

Answer: It depends on the specifics of the original content. If you're using informational content in a chart that is less than one page from a whole book, you are using a small excerpt and essentially "quoting" from the work. Here you do not need to ask permission or pay a license fee. Using just what you need may be justified as a fair use. But if the chart is the entire intellectual property, as with Vanessa Otero's News Bias Chart,(it's not part of a larger work), then paying a license fee is appropriate.

Do you think that the 10 percent still applies or is there a gray area that allows a bit more of materials within the last 50 yrs? I know we can't do a whole work.

Answer: Here the old "guidelines" are interfering with a good understanding of the law. There is no 10% law. In many cases, it may be necessary and legal for educators and patrons to use an entire work. The big idea is to use "just what you need" to accomplish your purpose, while being aware of the risks of market substitution. It's better to use the 3 questions on transformativeness or the 4-factor analysis than to rely on the outdated guidelines from the 1970s.

When advertising library programs, can images be used without permission and be considered exempt by the fair use clause because our programs are not-for-profit and educational?

Answer: It depends on what kinds of images and how you use them for particular purposes. Book covers have a purpose that is primarily promotional and your library posters are also promotional -- so there's no clear transformativeness since the purpose is essentially the same. For this reason, claiming fair use might be a stretch since the purpose of the marketing is promotional, not educational. Still, it's hard to imagine that a publisher would sue for a library promotion like this since events like this could be good for sales.

Is the use of the book cover to promote a book discussion at the library transformative enough to fit fair use?

Answer: This question demonstrates the power of fair use reasoning that's situational and contextual. If the promotion is for a book discussion experience, it is reasonable to argue that while the book cover image promotes the book, the use of the image on a library poster promotes a book discussion event. This may be transformative enough to claim fair use. Being able to use a reasoning process matters and courts protect teachers and librarians for making fair use determinations, even when they may be wrong.

How do you feel about fair use evaluation tools? Are they overly simplified, or usually helpful? If so, do you have a favorite? Example:

<https://librarycopyright.net/resources/fairuse/index.php>

Answer: Tools like this can be helpful in giving people practice at thinking through the four factor analysis of fair use. But they can sometimes lead people to have rigid thinking because the full details of the context and situation of a particular use cannot be included in these tools. These tools don't help people appreciate the give-and-take of the reasoning process. Instead, I recommend "strong sense" critical thinking, where you role-play the point of view of the different stakeholders.

Will this webinar be recorded and sent to attendees?

Answer: Yes, you can find it here: <https://mediaeducationlab.com/road-copyright-clarity>

Great image. Where is it from? Did you have to get permission to use it?

Answer: I use images from many sources, including Pixel Bay, Adobe, Flickr and other sources. I mostly use images that have CC licenses but sometimes I make fair use of images, particularly when I use images metaphorically. I do not use attribution in my PPT slides because I see them as highly distracting and it also can diminish the impact of my message.

If recorded, I would love to retransmit this entire presentation, with permission from Renee, to share with our faculty and students here at IU.

Answer: I give you permission to share in any way you see fit. I appreciate your leadership as a copyright education advocate! Thank you!