

# COPYRIGHT ISSUES

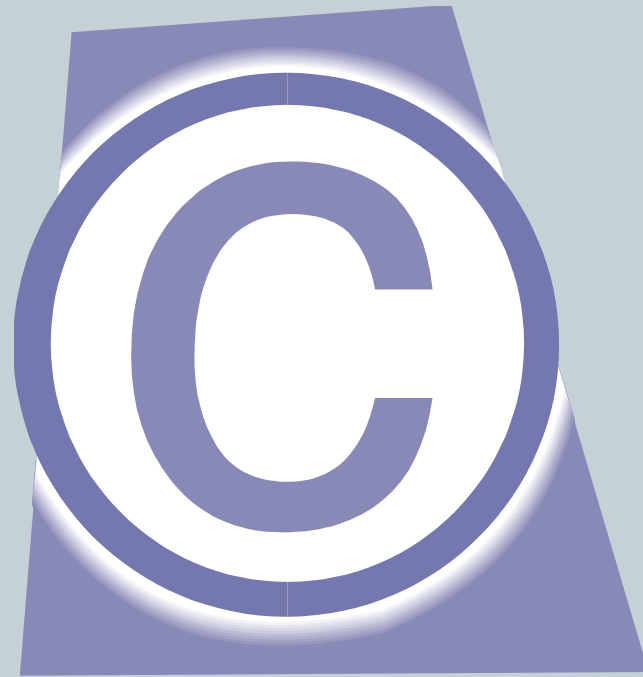
(YOU SHOULD KNOW)



# INTRODUCTION



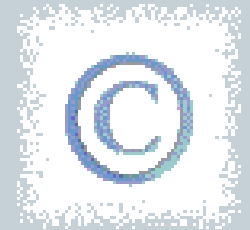
## COPYRIGHT ON CAMPUS



# What Does Copyright Protect?



- Original Expression - A Person's Unique Way of Saying Something
- Fixed in a Tangible Medium
- Only Requires Minimum Creativity
- Does Not Protect Facts, Ideas, Processes



## **EXCLUSIVE RIGHT OF THE OWNER:**

- Make Copies
- Create Derivative Works
- Distribute, Display and Perform Works Publicly

# When Does It Begin and End? Terms of Protection



- **Works Published Before 1978**
  - Publication + 95 years or 28 years if published before 1964 and not renewed
- **Works Created During/After 1978**
  - Life of author + 70
  - Works for hire: Publication + 95/creation + 120
- **Works Unpublished Before 1978**
  - Life of author + 70 or 2003, whichever is longer



# Exemptions for Higher Education



- Library's Special Privileges
- Section 110 (1) Displays and Performances in Face-to-Face Teaching
- Section 110 (2) Displays and Performances in Distance Learning (the "TEACH Act")
- Modifications for Blind and Disabled (121)
- **Fair Use**

# Other Laws



- ✓ TEACH Act: Right to Display and Perform Works in the Classroom During a Lecture

*Brick-and-mortar classrooms or Virtual classrooms with appropriate safeguards*

- ✓ DIGITAL MILLENIUM COPYRIGHT ACT (DCMA)

Do not circumvent copyright with technology

Service providers (e.g. UWG) have responsibilities

Software protection

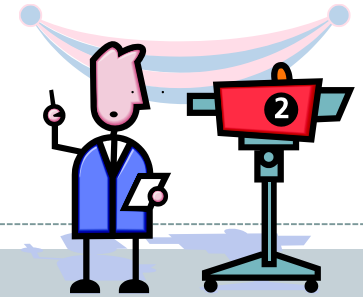
Ephemeral recordings allowed

- ✓ DIGITAL PERFORMANCE RIGHTS IN SOUND RECORDINGS (DPRA)

Added webcasting to the DCMA



# PEGs and Infringement



- Public, educational, government access channels fall under FCC purview via Communications Act of 1934
- Freedom of expression is protected
- Applicable laws related to PEGs more concerned with access and funding
- Georgia did away with requiring PEGs for cable franchises in 2012
- While it arguably extends the reach of what is considered education, infringement is still possible

So smarty... how can I comply with the law?





# MUSIC- ASCAP, BMI, SESAC



- “**Locally Originated Programming**” shall mean **television programming** produced or which is **inserted locally by Licensee** or through an interconnect (an association of two or more cable systems for the purpose of distributing advertising or programming simultaneously) **or otherwise originating by or on “Licensee’s Cable Television System”** including, without limitation, (i) programming on locally-originated channels, including advertising and promotional materials thereon; (ii) **programming on public, educational and governmental (“PEG”) access channels**; (iii) public service announcements; (iv) programming on leased access channels; and (v) advertising and promotional materials inserted locally or through an interconnect by or on behalf of Licensee into national, regional or local cable programming services.
- (j) “Licensee’s Cable Television System” shall mean a cable television system, system of closed circuit distribution, MMDS, internet, broadband, including any linear feed via the Internet, broadband or other online service or other means of distribution which is owned and operated by Licensee and by which Licensee transmits Locally Originated Programming on Licensee’s campus, except that it shall not include free over-the-air broadcast television.

[ASCAP](#)



# IMAGES



Suggested steps:

- **You should ALWAYS** credit the source of your images.
- Find out if the owner of an image states how their image can be used. Check the “Terms of Use” on websites containing the material – do they allow you to copy or share? Example: [Medical Videos](#)
- Whenever possible, ask the copyright holder for permission and keep a record of this correspondence.
- Fill out the Fair Use Checklist – be honest!
- **When in doubt, DON'T USE IT!**
  - Find a substitute
  - Get permission
  - Sign up with a service if high volume is needed



# Digital Image Services



[Digital Image Library – Artstor](#)

[Terms of Use](#)

[Digital Image Library – iStock](#)

[Terms of Use](#)

[Google Images - NOT A SERVICE!!](#)



# B-ROLLS, CLIPS, etc.



## **B-Rolls are generally ok for an educational use on PEGs**

Should be used in the background

Limit use to educational purpose

For creative works, credit author/owner

Don't make copies and post on Facebook, YouTube, etc.

## **VIDEOS, VIDEOCLIPS are more challenging depending on the source:**

Service providers (like YouTube, etc.) are not the owners of the clips

Downloading is usually prohibited

Review the terms of use

Use the clip from the website but... *if you film, you are making a copy!*

# CLIP SERVICES



[CNN Video Clips](#)

[C-Span Terms of Use](#)

[YouTube Copyright Page](#)

[YouTube Fair Use Page](#)

[Films on Demand Educational Videos](#)

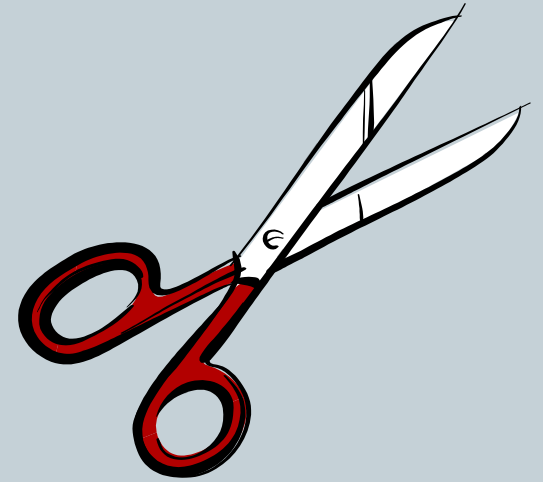
[USG Library Databases](#)



# Fair Use Statute



- **Four Factor Fair Use Test**
  - Character of the use
  - Nature of the material used
  - Amount and importance of part used
  - Effect on market for permission/original



**If a Use is Not Fair, Cut it Down, Substitute, or Get Permission!**

# Case Study



- Entire poem on UWG website for scholarship application
- Student organization posted it
- For UWG students only
- Author's name & copyright mark provided
- The purpose of the poem was to encourage application for scholarship
- Resided on internet, not UWG network

# Factor 1: Purpose and Character of the Use



## *Weighs in Favor of Fair Use*

- Nonprofit Educational Institution
- Used for Purpose of Teaching
- Used for noncommercial, nonprofit educational use
- Transformative
- Use is necessary to achieve your intended educational purpose

## *Weighs Against Fair Use*

- Commercial activity, profit from use
- For public distribution
- Used for entertainment
- Mirror image copying
- Use exceeds that which is necessary to achieve educational purpose



## Factor 2: Nature of Copyrighted Work



### *Weighs in Favor of Fair Use*

- Published work
- Factual/informational and educational in nature or nonfiction work
- Non-consumable work

### *Weighs Against Fair Use*

- Unpublished work
- Fiction or highly creative work (art, music, novels, films, plays, poetry)
- Consumable work (workbook, test)

*Note: This factor is not considered as important as the others.*

## Factor 3: Amount and Substantiality of Portion Used



### *Weighs in Favor of Fair Use*

- Decidedly small portion of work used
- Portion used is not central or significant to entire work as a whole
- Amount is narrowly tailored to accomplish a legitimate purpose in the course curriculum
- Access limited to students enrolled in course for only the term of the course

### *Weighs Against Fair Use*

- Large portion or entire work used
- Portion used is central to work or “heart of the work”
- Amount taken is more than necessary to accomplish a legitimate purpose in the course curriculum or is not narrowly tailored to accomplish a legitimate purpose in the course curriculum
- Access not limited

# Factor 4: Effect on Market for Original



## *Weighs in Favor of Fair Use*

- Permission for digital excerpt is not readily available from publisher or Copyright Clearance Center at a reasonable price
- Decidedly small portion used
- User owns lawfully acquired or purchased copy of original work
- Use stimulates market for original work

## *Weighs Against Fair Use*

- Permission for digital excerpt is readily available from publisher or CCC
- Large portion or entire work used
- User does not own lawfully acquired or purchased copy of original work
- Use impairs the market or potential market for original work

# ARGUMENTS – It is Infringement



- “...the primary means by which she makes her living... is from the sales and licensing of books and products containing and related to her Poem. When others make unauthorized uses of the Poem, [author and her company] are damaged especially since each *unauthorized posting of her copyrighted work perpetuates its continuing illegal distribution.*”
- “...federal copyright and trademark law affords copyright and brand owners... the **exclusive right** to reproduce their works and use their brands in any medium. Unauthorized publication... constitutes federal copyright and trademark infringement pursuant to 17 U.S.C. § 202 and 15 U.S.C. § 1111, *et. seq.* and is also a violation of state unfair competition laws.”
- “Federal law authorizes copyright owners... to recover statutory damages of up to \$30,000.00 for each copyright violation in addition to the recovery of all attorneys’ and costs involved in pursuing the copyright violation. 17 U.S.C. §§ 504(c)(1) and 505. If a court determines the infringement intentional or “willful,” the law authorizes a court to award statutory damages of up to \$150,000.00 per copyright violation.”

# Arguments – UWG is not liable



- Sovereign immunity
- Offensive material was immediately removed
- Limit damages (US Copyright Office statutory damages):

*If infringer was not aware and had no reason to believe that the acts constituted an infringement of copyright, and if the infringer was: (i) an employee or agent of a nonprofit educational institution, or (ii) a public broadcasting entity which or a person who, as a regular part of the nonprofit activities of a public broadcasting entity (as defined in section 118(f)) infringed by performing a published nondramatic literary work or by reproducing a transmission program embodying a performance of such a work, the court in its discretion may reduce the award of statutory damages to a sum of **not less than \$200**.*



# Moral of the Story...



Thomas Edison tried two thousand different materials in search of a filament for the light bulb. When none worked satisfactorily, his assistant complained, “All our work is in vain. We have learned nothing.”

Edison replied very confidently, “Oh, we have come a long way and we have learned a lot. We know that there are two thousand elements which we cannot use to make a good light bulb.”

**Moral: You can learn from your mistakes...  
but it might be costly!!**

