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Fair Use in Education

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SI 519/PubPol 688
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Outline

- What is Fair Use?
- Coursepacks
- Course Management Systems
- Open Educational Resources
- A world without Fair Use?
- Recommendations

Fair Use – What is it?

- Origin: Folsom v. Marsh (1841)
- Legislation: Copyright Act of 1976, Section 107

Four Factors

- Purpose and character of **use**
- Nature of the **copyrighted work**
- Amount or substantiality of **copyrighted work**
- Effect on market of **copyrighted work**

Coursepacks: Relevant Cases

Factor	Basic Books, Inc. v. Kinko's Graphics Corp., (S.D.N.Y. 1991)	Princeton University Press v. Michigan Document Services, Inc., (6th Cir. 1996)
Purpose & character of use	Commercial	Commercial
Nature of original	Factual	Creative
Amount of original used	5 – 25%	Most were 5% - 18%, one was 30%
Market effect on original*	Publishers and authors make significant income from licensing fees	Publishers and authors make significant income from licensing fees

Coursepacks: Relevant Cases

Factor	Kinkos (1991)	MDS (1996)
Purpose & character of use	UNFAIR	FAIR
Nature of original	FAIR	UNFAIR
Amount of original used	UNFAIR	FAIR
Market effect on original*	UNFAIR	FAIR

Coursepacks: Takeaways

- Is mechanical copying a *use*?
- Are publishers *entitled* by copyright law to licensing fees for *excerpts used for classroom use*?

Coursepacks: Takeaways

“The publishers must demonstrate a likelihood that MDS's use of the excerpts replaces or affects the value of the copyrighted works, not just that MDS's failure to pay fees causes a loss of fees, to which the plaintiffs may or may not have been entitled in the first instance.”

Source: Princeton University Press v. Michigan Document Services, Inc., (6th Cir. 1996)

Fair Use – a little clarification, please?

CONFU

- Conservative interpretation
- Influence of publishers

TEACH Act (2002)

“There’s no photocopying for my classes; my materials are on CTools”



The screenshot shows the top portion of the CTools website. At the top right is a blue navigation bar with a white "log in" button featuring a red arrow icon. Below this is a dark blue header with the text "ctools.umich.edu" in white, with "course/project sites" in a smaller font underneath. A horizontal navigation menu follows, with "About" highlighted in white on a dark blue background, and a question mark icon to its right. The main content area has a white background. On the left is a vertical navigation menu with links: "Welcome", "About" (in red), "Sites", "Features", "Training", and "Survey Results". The main content area contains the heading "What is CTools?" in bold black text, followed by a paragraph: "CTools is an advanced web-based course and collaboration environment. It is a set of tools designed to help instructors, researchers and students create course websites and project websites."

Source: <https://ctools.umich.edu/portal>

Sakai/CTools: Default method

Resources

?

Upload Files

Upload as many files as you like. If you change your mind about uploading one of your files, click the 'X' button beside it. Press the button when you have selected all the files you want to upload.

Location: 32727ef2-813f-43c0-a418-d15b6e470888 /

File To Upload	<input type="text"/>	<input type="button" value="Browse..."/>	
Display Name	<input type="text"/>	<input type="button" value="Add details for this item"/>	<input type="button" value="X"/>

Add Another File

Email Notification

None - No notification



Source: <https://ctools.umich.edu/portal>

Sakai/CTools: CONFU-Friendly Method

Resources

?

Upload Files

Upload as many files as you like. If you change your mind about uploading one of your files, click the 'X' button beside it. Press the 'Upload' button when you have selected all the files you want to upload.

Location: 32727ef2-813f-43c0-a418-d15b6e470888 /

File To Upload

Browse...

Display Name

Hide details for this item



Description

* Copyright Status

Material is in public domain.  (more info)

Copyright Alert

Display copyright alert and require acknowledgement when accessed by others. (what's this?)

Availability and Access

Choose who can see this item.

Only **members of this site** can see this file.

This file is **publicly viewable**.

Source: <https://ctools.umich.edu/portal>

Sakai/CTools: CONFU-Friendly Method

* Copyright Status

Copyright Alert

Availability and Access

Choose who can see this item.

Material is in public domain.

(more info)

Material is in public domain.

I hold copyright.

Material is subject to fair use exception.

I have obtained permission to use this material.

Copyright status is not yet determined.

Use copyright below.

ent when accessed by others. (what's this?)

Copyright Restriction Download Warning

Title: Frankel - Willing Partner - Tech Review jul 05.pdf

Copyright:

- You may download or copy this file for use here.
- You may NOT download or copy this file to another site.
- You may NOT download or copy this file for publication or sale.

I Agree

Cancel

Source: <https://ctools.umich.edu/portal>

How does this affect Open Educational Resources (OER, including OCW)?

- Clearing process -> copyright education and replacement
- Is this process really necessary?
- What if we can't find a replacement image licensed through Creative Commons?
- What is the risk of using copyrighted work?

BY: Tracy O ([flickr](#))

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Slide Source: Hidden Action I Lecture
from SI 680 by Jeff MacKie-Mason

reputation

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A world without fair use?

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BY: nice.weiss ([flickr](#))



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Unconstitutional?

Why do we have copyright?

- Statute of Anne (1709)

“The Encouragement of Learning”

Source: Copyright Act 1709

- Progress Clause

“To Promote the Progress of Science and the

Source: U.S. Constitution Article I, Section 8, Clause 8

But we still want people to maintain
the ***incentive to create and publish***
innovative scholarly works



BY: betsyjean79 (flickr)

(CC) BY-NC-SA

<http://creativecommons.org/licenses/by-nc-sa/2.0/deed.en>

Recommendations for U-M

- Educate students and faculty about copyright alongside plagiarism
- Add copyright information to resources on CTools
- Cite sources of all content in presentations – copyrighted, **public domain, CC**
- When articles are available through library subscriptions, make it easier to the original (instead of posting on PDF on CTools)
- “Be nice.” – Brewster Kahle, U-M Talk, 10/22/08
- Push for clarification of current Fair Use ambiguities
- Radical Idea: Nonprofit or university-owned copy-shop

These guidelines work for documentary filmmakers – why not educational institutions?

- http://centerforsocialmedia.org/resources/online_video
- Less restrictive than CONFU
- Trump card: *Transformative* use

Sources

- <http://www.copyright.iupui.edu/FUsummaries.htm>
- http://www.bc.edu/bc_org/avp/cas/comm/free_speech/basicbooks.html
- http://copyright.umich.edu/using_copyrighted_material.html
<http://www.utsystem.edu/ogc/intellectualproperty/michigan.htm>
- http://centerforsocialmedia.org/resources/online_video
- http://www.law.cornell.edu/copyright/cases/99_F3d_1381.htm
- http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter9/
- http://www.centerforsocialmedia.org/resources/fair_use/
- https://open.umich.edu/wiki/index.php5/Fair_use
- <http://cyber.law.harvard.edu/node/4376>
- <http://www.copyright.com/media/pdfs/CR-Teach-Act.pdf>

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Questions?

IT'S NOT JUST THE ECONOMY, STUPID: LINKING FREE TRADE AND THE WAR ON TERROR

Dr. David Auerswald and Ms. Caroline Shaver

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