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### An Introduction to DMCA and Fair Use for Educators

Cecilia Basic

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*Florida Institute of Technology*  
High Tech with a Human Touch™

# **An Introduction to DMCA and Fair Use for Educators**

Cecilia Basic, Ph.D.  
Research Office



## **Cecilia Basic, Ph.D. - IP Specialist**

- Ph.D., Analytical Chemistry, University of Florida
- Trained in intellectual property (IP) management and technology transfer;
- Manage Florida Tech's IP portfolio:
  - Determine IP ownership and execute Assignment Agreements (AAs);
  - Assist IP counsel and faculty with patent prior art and prosecution;
  - Conduct compliance with reporting under Federal Bayh-Dole Act:
- Assist in negotiating tech transfer agreements including:
  - Inter-Institutional Agreements (IIAs)
  - Material Transfer Agreements (MTAs)
  - Research Agreements (RAs), Memorandums of Understanding (MOUs)
  - Option and Licensing Agreements
  - Non-disclosure Agreements (NDAs) a.k.a. Confidentiality Agreements (CDAs)



## Key US Laws

- **Copyright Act:** US Code Title 17 – first enacted 1790 and last major amendment in 1976;
- **Digital Millennium Copyright Act (DMCA)** - Statutory provision Pub. L. No. 105-304, 112 Stat. 2860 (Oct. 28, 1998);
- **Technology, Education and Copyright Harmonization Act (TEACH)** - Subtitle C of Title III of H.R. 2215 (Nov. 3, 2002).



Article I, Section 8, Clause 8 of the U. S. Constitution: authors granted exclusive rights to their works for a limited time

DMCA harmonizes Title 17 with international copyright practices AND addresses digital copyright issues

TEACH defines what uses are permissible in distance education



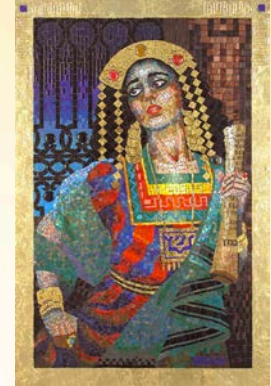
## US Copyright

- Copyright law, protects original works of authorship cast into a tangible form, including:
  - literary, dramatic, musical, and artistic works, such as poetry, novels, movies, songs, computer software, and architecture.
- Copyright does not protect:
  - facts, ideas, systems, or methods of operation, although it may protect the way these things are expressed.
- Five main copyrights allow authors to prevent others, for a limited time, from:
  - copying, distributing (selling), making derivative works, publicly displaying, or publically performing their works.



## Fair Use

- A principle based on the belief that the public is entitled to freely use portions of copyrighted materials for commentary and criticism.
- Consider four factors when applying fair use:
  - What is the purpose of the use?
  - What is the nature of the copyrighted work?
  - What amount of the work will be used?
  - Are there any monetary consequences to the author or market?
- Fair use is an interpretation - often left to the courts - and can differ [individuals, companies], [educators, and libraries].



Queen Esther Mosaics  
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<http://www.lilianbroca.com/queen-esther-mosaics>



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# Digital Millennium Copyright Act of 1998 (DMCA)

- Comprehensive revision of 1976 Copyright Act and implements two World Intellectual Property Organization (WIPO) treaties;
- Comprised of 6 Titles:
  - **Title I**, “WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998,” implements the WIPO treaties
  - **Title II**, “Online Copyright Infringement Liability Limitation Act”
    - creates limitations on the liability of online service providers for copyright infringement when engaging in certain types of activities.
  - **Title III**, “Computer Maintenance Competition Assurance Act”
    - creates an exemption for making a copy of a computer program by activating a computer for purposes of maintenance or repair.
  - **Title IV** contains six miscellaneous provisions, relating to the functions of:
    - the Copyright Office, **distance education**, the exceptions for **libraries** and for making ephemeral recordings, **webcasting of sound recordings**, and the applicability of collective bargaining agreement obligations in the case of transfers of rights in motion pictures.
  - **Title V**, the “Vessel Hull Design Protection Act,”
    - creates a new form of protection for the design of vessel hulls.



## DMCA - continued

- Targets unauthorized sharing of digital materials;
- (Infamous) DMCA take-down notices issued to service providers by copyright holders claiming infringement;
- Limits liability of service providers if they take certain actions, including:
  - **Register an agent** with the Copyright Office;
  - Have a current **internet users' policy** in place;
  - **On-going education** of providers internet users about copyright requirements, including obtaining permissions;



Florida Tech – and all universities  
– are service providers

Eric Kledzik, VP for IT is our  
DMCA registered agent

Policy 5557 Jan. 1, 2015  
IT-1006 Policy on DMCA

Policy 1448 Apr. 14, 2007  
IT-i9001 – DMCA Consultations





## Technology, Education and Copyright Harmonization Act of 2002 (TEACH)

- Applies only to non-profit, accredited educational institutions that are compliant with DMCA;
- Grew out of limitations placed on distance education under DMCA;
- TEACH requirements for use of materials:
  - Access is restricted to students enrolled in class;
  - Must be used in the same manner as in a face-to-face class;
  - Only essential portions of material should be used;
  - Materials must have been lawfully acquired;
  - Students must be notified that materials are copyrighted;
  - May digitize materials only if digital versions are not already available.



## **Educator Fair Use Guidelines\***

- **Create your own content;**
- Get permission from the copyright holder;
- Provide links to a work, rather than copying the work itself;
  - Use a top-level link, i.e. avoid deeply embedded materials;
  - Ensure that the site is a legitimate source, i.e. it has the authority to host or post content;
- Make an attribution to the original source;
- Use public domain works, i.e.:
  - Works with expired copyrights;
  - Government documents;
  - Open access or licensed under Creative Commons.

***\*These are guidelines only and are not definitive.***



## **Educator Fair Use Guidelines\* - continued**

- Apply the 10% rule when using other author's works:
  - i.e., if using a 2500 word document, use 250 words; if using a 60 minute video, use 6 minutes, etc.;
- Use content from a published source:
  - E.g. from a published book, as opposed to a website
- Break it up:
  - Intermingle portions of the work with commentary/discussion;
- Encourage student to purchase the book/article;

***\*These are guidelines only and are not definitive.***



## Educator Fair Use Guidelines\* - continued

- Use low resolution images;
- Avoid using images for embellishment purposes only;
- Extra discretion required when using films, videos or music recordings:
  - Avoid popular films, videos and music, but if required, secure a license;
  - Use documentary education, historic, public domain or specially licensed works whenever possible;
  - Intermingle instructor comment when using significant content – do not use content longer than what is required to make your point;
  - Provide links to the works and have students view it from the site

**\* These are guidelines only and are not definitive.**



## Danger Zone Materials

- Only use when permission has been granted or where there is a “strong” fair use case:
  - Political cartoons
  - Getty images
  - Popular movies
  - Television shows
  - Popular songs
  - Trademarks



## **“Five Ways to Stay Out of Trouble”\***

- Assume It's Protected
- Read Click-Wrap Agreements
- Remove Unauthorized Material
- Investigate Claims Promptly
- When in Doubt, Seek Permission

\*from Stim, Richard, “Getting Permission: Using and Licensing Copyright-Protected Materials Online and Off, 6<sup>th</sup> ed., Nolo, Berkeley, CA, 2016, p. 211.



## Sources

### US Copyright Law

- <https://www.copyright.gov/title17/>

### DMCA

- <https://www.copyright.gov/legislation/dmca.pdf>

### 1998 Conference on Fair Use (all 197 pages)

- [https://www.uspto.gov/sites/default/files/documents/confurep\\_0.pdf](https://www.uspto.gov/sites/default/files/documents/confurep_0.pdf)

### Reproduction of Copyright Works for Educators and Librarians

- <https://www.copyright.gov/circs/circ21.pdf>

### Getting Permissions and Guidelines

- Stim, Richard, "Getting Permission: Using and Licensing Copyright-Protected Materials Online and Off, 6<sup>th</sup> ed., Nolo, Berkeley, CA, 2016.
- Fruin, Christine, <http://ufdc.ufl.edu/AA00007596/00004>

### Publishers' Copyright Licenses

- <http://www.sherpa.ac.uk/romeo/index.php>