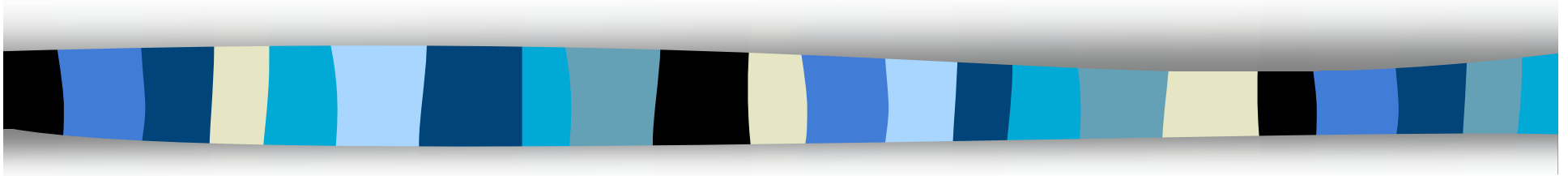


# Copyright in Scholarship and Instruction

<http://scholar.lib.vt.edu/copyright/>



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FDI 2009

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# U.S. Constitution

## Article I Section 8 Clause 8

- [The Congress shall have power] "To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."



# Copyright Law: *U.S. Code, Title 17*

- **Section 102:** Original authorship stabilized
  - when fixed in a tangible medium of expression
- **Section 106:** Exclusive rights of creators

## Limitations to exclusive rights

- **Section 107:** Fair use
- **Section 108:** Library services
- **Section 110:** Instruction--TEACH Act

<http://fairuse.stanford.edu/>



# Who owns the copyright?

- Creators of original works
  - Life + 70 years
- Employers: works for hire
  - 95 years from publications, or
  - 120 years from creation
- Creators' assignees



# As copyright holder, you control

- Reproduction
- Modification
- Distribution
- Public performance
- Public display

EXCEPT...



# Permission or license to use a copyrighted work is NOT required if

- Work is a fact or an idea
  - Phone numbers, earth is round
- Public domain
  - Does not mean the Internet/worldwide web
  - Intellectual property not owned or controlled by anyone
    - US government documents
    - [Very old \[see App. A\]](#)
- Fair use
- TEACH Act

# Fair Use Myth

It's OK--it's for educational purposes.

Before using someone else's work *without permission*, weigh **ALL 4 FACTORS**

[Checklist](#)

[DLA/GS Analysis Tool](#)



1. Purpose and character of use
2. Nature of the work
3. Amount, substantiality
4. Effect



# 1. Purpose and character of use

- Commercial or educational use
- For profit or not
- Degree of transformation; value added
- For criticism, commentary, news reporting, teaching, scholarship, research





## 2. Nature of the copyrighted work

- Worthy of (extensive) protection?
- Character of the work?
  - fact (information) or fiction (imaginative)
    - Published facts weigh in favor of fair use
    - Unpublished original expressions weigh in favor of seeking permission



### 3. Amount and substantiality

- Use only what is necessary
- Quantity in relation to whole work
- Quality in relation to whole work



## 4. Effect

- Harm to potential market or value of a work after a portion has been used separately from the whole



# Fair use: weigh *each* factor

- Did the scales tip in favor of fair?
- If not
  - Use library services: Title 17 U.S.C. Sec. 108
    - [EReserve](#)
  - Ask for permission
  - Modify your use



# Copyright permission services

- Copyright Clearance Center
  - <http://copyright.com>
- Association of American Publishers
  - [http:// www.publishers.org](http://www.publishers.org)

You asked but they never responded.  
*You don't have permission.*



# Orphaned Works

- Good faith, diligent, unsuccessful search
- US Copyright Office report (2006-01)  
<http://www.copyright.gov/orphan/orphanreport.pdf>
- The “Orphan Works” Problem (2008-03-13)
  - Statement of Marybeth Peters, Register of Copyrights, to House Subcommittee on Courts, the Internet, and Intellectual Property  
<http://www.copyright.gov/docs/regstat031308.html>
- Legislation, amendments...
- Assume it's copyrighted



# Copyright re Libraries: Sect. 108

- Ground Rules
  - No commercial purpose
  - Open to outsiders
  - Notice on copies
- Preservation copying
- Photocopy Services: Copies for private study
- ILL: copies for InterLibrary Loan
  - <http://www.ill.vt.edu/Copyrightinformation.htm>
- Reserve Services: copies for students in a course
  - <http://www.lib.vt.edu/services/circ-reserve/copyright.html>



# Copyright for Instruction

- USC Title 17 Section 110
  - Limitations of certain performances and displays
  - Face-to-face classroom settings
- Broadened by TEACH Act (Nov. 2, 2002)
  - **T**echnology **E**ducation **A**nd **C**opyright **H**armonization
  - Must have an institutional copyright policy





# TEACH Act

- Fair use standards in online education environment
- Modified existing copyright law for
  - Accredited nonprofit educational institutions
  - Mediated instruction
  - Integral part of class session
  - Limited to enrolled students
  - Accurately informed about copyright compliance
  - Reasonably prevent
    - Retention beyond course
    - Unauthorized further dissemination



# TEACH Act: Works allowed

DISTANCE LEARNING CLASS IS THE  
SAME AS IN THE CLASSROOM

- Show entire nondramatic literary works
  - News, poetry, speech
  - Show entire nondramatic musical works
- Everything else in reasonable and limited portions
  - Plays, movies, operas, TV shows, choreography



## TEACH Act--You must not use

- Works marketed primarily for distance education
- Unlawfully made or acquired copies
- Materials meant for additional study outside of class
  - EReserve, Reserve, Blackboard



# TEACH Act--You must

- Transmit as an integral part of class session
  - Regular part of systematic, mediated instruction
- Use copyrighted materials only when directly related to the lesson
- Limit access to students enrolled in the course
- Have an institutional copyright policy & inform students about it
- Block further dissemination



# Copyright Resources from VT DLA

- Copyright Homepage

<http://scholar.lib.vt.edu/copyright/>

- Library Copyright Policies

<http://scholar.lib.vt.edu/copyright/cpolicies.html>

- Fair Use

<http://scholar.lib.vt.edu/copyright/doesntsa.html#fairuse>

- Copyright and ETDs

<http://scholar.lib.vt.edu/theses/copyright>

- Request Permission: Sample letter

<http://scholar.lib.vt.edu/theses/copyright/permission.html>



# Copyright Resources

- Copyright Advisory Office, Columbia  
<http://copyright.columbia.edu>
- Copyright Management Center (IUPUI)  
<http://www.copyright.iupui.edu/>
- Crash Course in Copyright (UTAustin)  
<http://www.utsystem.edu/OGC/IntellectualProperty/cprtindx.htm>
- Library of Congress, Copyright Office  
<http://lcweb.loc.gov/copyright/>
- Legal Information Institute (Cornell)  
<http://www4.law.cornell.edu/uscode/17/>
- Stanford University Libraries  
<http://fairuse.stanford.edu>
- WIPO Study on Copyright Limitations and Exceptions for Libraries and Archives (Crews, 2008-2-26)  
<http://www.wipo.int/meetings/en/doc%5Fdetails.jsp?doc%5Fid=109192>
- TEACH Act Toolkit (NC State)  
<http://www.lib.ncsu.edu/scc/legislative/teachkit/guidelines.html>

# Open Access and Compliance with NIH Public Access Policy

<http://publicaccess.nih.gov/>



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Digital Library and Archives

University Libraries, Virginia Tech

March 28, 2009

<http://scholar.lib.vt.edu>



# Reason for Discussing Open Access

- Required article deposit to comply with federal public access policy
  - NIH requirement as of April 7, 2008
  - Subsequent federal granting agencies
- Faculty sentiment for access via university/library public repository





# Public Law 110-161

## Div. G, Title II, Sect. 218

The Director of the NIH shall that require *all investigators funded by the NIH* submit or have submitted for them to PubMed Central an e-version of their final, peer-reviewed manuscripts *upon acceptance for publication*. These shall be publicly available no later than 12 months after the official date of publication in a manner consistent with copyright law.

<http://grants.nih.gov/grants/guide/notice-files/NOT-OD-08-033.html>



# PubMed Central

- PMC is a digital archive of full-text, peer-reviewed biomedical and life sciences journal articles.
- Content is publicly accessible without charge
- <http://www.pubmedcentral.nih.gov/>



NIH grant awarded

apply for NIH grant

VT faculty  
grad students  
staff R+D

compliance complete

submit articles  
for pub

preview reformatted  
article

accepted for publicaition  
-sign here

\*submit final  
peer reviewed  
article w/in 12 mos

authors retain enough  
rights for NIH

register w/  
PubMed Central



## Retain enough rights

### *Roads to Open Access*

- Authors hold exclusive copyright until they transfer them to publishers.
  - May require a contractual addendum
  - May request and receive permission
- Authors share their rights by permitting *non-exclusive use* of their copyrighted works.
  - Journal publication
  - [NIH PMC] deposit
  - University/library repository



# What is required to comply?

1. Retain enough copyright to grant PMC a license for public access
2. Submit article through the PMC website
  - Final, peer-reviewed manuscript with all graphics and supplemental materials
  - Confirmation of the final, reformatted version
3. Include PMC reference number to demonstrate compliance
  - Reports to NIH
  - Subsequent grant applications
  - Universities become more concerned with faculty publications due to risk of institutional consequences for errors or neglect.



# NIH Public Access Policy

- April 7, 2008: Articles accepted for publication on or after this date must be deposited in PubMed Central.
- May 25, 2008: NIH applications, proposals and progress reports must include PubMed Central reference number when citing articles arising from NIH funded research.
- March 19, 2009: Omnibus Appropriations Act of 2009 makes the NIH Public Access Policy Permanent, effective April 7, 2008.



# Options for Copyright Management

- Some journals will deposit articles in PMC  
[http://publicaccess.nih.gov/submit\\_process\\_journals.htm](http://publicaccess.nih.gov/submit_process_journals.htm)
- University could negotiate directly with publishers.
  - License could be automatic, flexible
    - Authors would no longer have to individually negotiate to comply with federal policies
    - Could cover federal deposit (e.g., PubMed Central) and VT repository
  - Library contracts for ejournals and databases
- Faculty use sample publication agreements  
<http://www.arl.org/resources/pubs/br/br258.shtml>  
<http://www.bioone.org/>  
<http://www.mclibrary.duke.edu/nihpolicy/>



# NIH suggests language for addenda to publication agreement

*The [Journal] acknowledges that [Author] retains the right to provide a copy of the final manuscript to the NIH upon acceptance for publication for public archiving in PubMed Central as soon as possible but no later than 12 months after publication in [Journal].*

<http://publicaccess.nih.gov/FAQ.htm#c3>





# NIH Public Access Policy Specifics

1. Applies to all peer-reviewed articles that arise, in whole or in part, from direct costs funded by NIH accepted for publication on/after April 7, 2008
2. Institutions and investigators are responsible for ensuring that any publishing or copyright agreements concerning submitted articles fully comply with this Policy.
3. PubMed Central (PMC) is the NIH digital archive of full-text, peer-reviewed journal articles. Its content is publicly accessible and integrated with other databases (see: <http://www.pubmedcentral.nih.gov/>).
4. The final, peer-reviewed manuscript includes all graphics and supplemental materials that are associated with the article.
5. Beginning May 25, 2008, anyone submitting an application, proposal or progress report to the NIH must include the PMC or NIH Manuscript Submission reference number when citing applicable articles that arise from their NIH funded research.



# NIH VT Compliance Form

<http://www.osp.vt.edu/forms.php>

By signing below, all investigators assure that they comply:

4. that the investigator is aware of the NIH Public Access Policy which applies to all peer-reviewed articles that are accepted for publication on or after April 7, 2008.
  - This requires that the investigator review publishing and /or copyright agreements to ensure that the investigator has the authority to submit to NIH's PubMed Central.
  - Submission to PubMed Central is required within 12 months of publication date.
  - **The investigator agrees to permit the VT Library to also archive and provide access to the above articles and ensures that permissions from the publisher will be obtained if necessary.**



# Contacts for Compliance with NIH Public Access Policy at VT

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