I. STATEMENT OF PURPOSE AND INTRODUCTION

Mission of Phillips Theological Seminary
Phillips Theological Seminary is an accredited institution of higher education, affiliated with the Christian Church (Disciples of Christ), whose purpose is to learn and teach how to be: attentive to God; responsible biblical and theological interpreters; faithful individuals and communities acting with God to transform the world.

Purpose of Copyright Policy for Phillips Theological Seminary
The guidelines set forth in this policy will enable the faculty, staff and students of Phillips Theological Seminary (hereinafter Phillips) to execute its educational responsibilities in compliance with Title 17 of the US Code, the US Copyright Law, and to better negotiate the complexities offered by the law. The statements regarding internally produced publications clarify Phillips’ stance in support of its community’s publication efforts. This policy reflects Phillips’ commitment to teaching, research, and the transmission of information in a manner compliant with the USC 17. Because the United States recognizes the Berne Convention, an international treaty, Phillips also complies with its terms. The primary point of Berne Convention for Phillips is the statement that “once a work is protected in one of the convention countries, it is protected by copyright in all of them.”

Included in the appendix of the policy are tools for the clarification and better understanding of U.S. copyright law.

The guidelines offered within this document cover only a subset of possible, common copyright situations. Guidelines are inherently problematic, and only the courts can decide if a copyright infringement has occurred.

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II. WHAT IS COPYRIGHT?

USC 17
Title 17 of the United States Code (hereinafter USC 17) compiles current US legislation that enables certain entities to control the reproduction, distribution, and performance of original works. Included in this compilation are significant congressional acts, such as the Copyright Act of 1976, and the Technology, Education, and Copyright Harmonization Act of 2002 (TEACH Act). An excellent list of legislation is included at the beginning of Circular 92.³

The following sections are either extracted from or follow closely the recommendations from the Copyright Clearance Center, used in accordance with their published invitation.⁴

What Is Copyright?
Copyright is an area of law that provides creators and distributors of creative works with an incentive to share their works by granting them the right to be compensated when others use those works in certain ways. Specific rights are granted to the creators of creative works in the U.S. Copyright Act (title 17, U.S. Code). If you are not a copyright holder for a particular work, as determined by the law, you must ordinarily obtain copyright permission prior to reusing or reproducing that work. However, there are some specific exceptions in the Copyright Act for certain academic uses, and permission is never required for certain other actions, such as reading or borrowing original literary works or photographs from a library collection.

What Is Protected by Copyright?
The rights granted by the Copyright Act are intended to benefit “authors” of “original works of authorship,” including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations. This means that virtually any creative work that you may come across – including books, magazines, journals,


newsletters, maps, charts, photographs, graphic materials, and other printed materials; unpublished materials, such as analysts’ and consultants’ reports; and non-print materials, including electronic content, computer programs and other software, sound recordings, motion pictures, video files, sculpture, and other artistic works – is almost certainly protected by copyright. Among the exclusive rights granted to those “authors” are the rights to reproduce, distribute, publicly perform, and publicly display their works.

These rights provide copyright holders control over the use of their creations and an ability to benefit, monetarily and otherwise, from the use of their works. Copyright also protects the right to “make derivative work,” such as a movie from a book; the right to include a work in a collective work, such as publishing an article in a book or journal; and the rights of attribution and integrity for “authors” of certain works of visual art. Copyright law does not protect ideas, data, or facts.

Duration of Copyright and Public Domain

In the U.S. the general rule of copyright duration for a work created on or after January 1, 1978 is the author’s life plus 70 years after the author’s death. This is often referred to as “life-plus-70.” Works created by companies or other types of organizations generally have a copyright term of 95 years.

Works in the public domain are materials that can be used without permission including:

- Works published before 1923 (this does not include revisions such as a Disney revision of a fairy tale)
- Copyrighted works published between 1923 and 1963 not having a copyright renewal.
- Works published between 1923 and 1963 with no copyright notice
- Works for which the author has given up all rights.
- Most federal documents
- Freeware

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Fair Use
A provision for fair use is found in the Copyright Act at Section 107. Under the fair use provision, a reproduction of someone else’s copyright-protected work is likely to be considered fair if it is used for one of the following purposes: criticism, comment, news reporting, teaching, scholarship, and research. If the reproduction is for one of these purposes, a determination as to whether the reproduction is fair use must be made based upon four factors:

1. The purpose and character of use (primarily whether for commercial or nonprofit educational use);
2. The nature of the copyright-protected work;
3. The amount of实质性 of the portion used; and
4. The effect of the use being evaluated upon the potential market for or value of the copyright-protected work.

Fair use is an ambiguous concept and the law does not state exactly what uses of a copyrighted work will be considered fair uses under the law and may therefore be used without obtaining permission. As such, individuals who are not lawyers may often need to be interpreters of the law in everyday circumstances, and answers as to how much reproduction may be considered fair use often remain unclear. The bottom line is that fair use requires a circumstance-specific analysis as to whether a particular use or reuse of a work may indeed be considered fair use.

If your use does not meet fair use criteria, and the work is protected by copyright, you probably need to obtain permission to use the work from the copyright holder or its agent.


Creative Commons
An alternative to the broad coverages of copyright law is the development of the Creative Commons, a nonprofit organization which has developed an alternative protection system for authors of creative works. A creator can select from a variety particular kind of licenses in order for her work to be used in the public domain without permission. Examples include shortening the duration of copyright, or offering free use to non-profit groups.8

Open Access
Open access is a related concept of by-passing fair use protocol as well as circumventing the barriers presented by the sky-rocketing prices of journals access. It is generally applied to the realm of scholarly communication. Open access refers to “literature that is digital, online, free of charge, and free of most copyright and licensing restrictions.”9 Open access comes in two varieties: an article may occur as free to read or as free to reuse. It is important for authors and users to understand that open access materials can be both peer-reviewed or not.10

Licenses
Licensing falls under the area of contract law, thereby trumping copyright law. Some licenses are negotiable, and others are not (like shrink-wrap licenses). It is important to understand that fair use is not applicable to licenses as it is not a part of copyright law.11

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Encoded/Encrypted Works
Computer software situations can be complex. Most often, the use of software deals with licenses. Licenses, as contract law, supersede copyright law.\textsuperscript{12}

Digital Rights Management
Digital Rights Management (DRM) is a technological restriction that places limitations on the “First Sale” doctrine and the ability to preserve or archive digital material.\textsuperscript{13} Laws regarding the circumvention of such technological protections include the provisions found in the Digital Millennium Copyright Act (DMCA) of 1998, codified in 17 USC. Exceptions of interest to educators or researchers occur in sections 1201(d), (f), and (g) and regard using software or digital materials whose DRM has been removed or circumvented.\textsuperscript{14}

III. TYPES OF USE AT PHILLIPS

CLASS USE

Face-to-Face Classes
Classroom printed materials usage fall into two categories; one that requires permission and one that does not.

- If the handout is a new work for which you could not reasonably be expected to obtain permission in a timely manner and the decision to use the work is spontaneous, you may use the work.
- Permission for use is required if the copy is planned in advance, repeated from semester to semester, or if the copy has been in existence long enough to reasonably be expected to obtain permission in advance
- Short excerpts do not require permission:
  - Poems less than 250 words or 250-word excerpt of a longer poem
  - Articles, essays, stories less than 2,500 words

\textsuperscript{12} Rebecca Butler, \textit{Copyright for Teachers and Librarians} (New Yorl: Neal-Schuman Publishers, Inc. 2004), 47.


Note about sound recordings other than musical performances (preaching recordings):

A “sound recording” may consist of spoken words, not music, and as such is treated differently under copyright law. If the sound recording consists of spoken words it is a literary work, not a musical work.¹⁵

Video display (including preaching DVDs):
- In the absence of licensing or other restrictions, display of a dramatic or nondramatic work in class for instructional purposes does not require permission as long as the material shown is legally obtained.
- Display of a video in class for entertainment purposes does require permission.

Illustrations, photographs, and collections of such works may be reproduced without permission in these circumstances:
- Single works may be used in their entirety but no more than five images by a single artist/photographer.
- No more than 10% may be used.

Television broadcasts, cable programs and recordings:
- Broadcasts and their recordings do not require permission, but the recordings may not be retained for longer than 10 days.
- Cable recordings require permission. Retention varies by program.

Music – Sheet music, live performance, and performance of a sound recording (Nota bene: A recorded performance of a work can be copyrighted separately from a script, composition on which it is based):
- Nondramatic live performance in the classroom does not require permission.
- Dramatic live performance in the classroom does not require permission unless a derivative work is made.¹⁶

• Performance of a sound recording of a nondramatic or dramatic work does not require permission.
• Copying and other fair use of sheet music or a sound recording of nondramatic and dramatic works:\textsuperscript{17}
  o Emergency replacement of a purchased copy (a new copy must be purchased as soon as possible)
  o Single or multiple copies of excerpts of works can be made, as long as the purpose is academic, not performance, and that the sections aren’t a performable whole unit
  o Printed, purchased copies may be edited as long as the fundamental character of the work is not altered, the lyrics are not altered, or if there are no lyrics, no lyrics are added
  o A single copy of recordings or performances may be made for rehearsal purposes
  o A single copy of a sound recording may be made by a teacher for the purposes of exercises and examinations, and may be retained by the teacher or institution.
  o Copyright notice must appear on any copies of printed music.

\textbf{Music – Digital Audio:} See the Music Library Association’s statement at the end of the Reserves section.

\textbf{Distance Learning and the TEACH Act}
Distance education does not have a specific definition, and can be hybrid in nature. The TEACH Act of 2002\textsuperscript{18} creates copyright law exceptions to allow educational institutions to perform distance education. Fair Use can be used in conjunction with the TEACH ACT. The TEACH Act does not extend to text-based electronic reserves, but does consider digital display of nondramatic works a natural extension of the teaching process.

\textsuperscript{16} Tomas A. Lipinski, \textit{Copyright Law and the Distance Education Classroom} (Lanham, MD: Scarecrow Press, 2005), 55.


\textsuperscript{18} For the TEACH Act see section 110(2) of United States Copyright Office, “Copyright,” accessed March 17, 2015, \url{http://www.copyright.gov/title17/92chap1.html#110}. 
The TEACH Act, however, requires institutions, not just individuals, to take responsibility for copyright compliance.

Overall the requirements for the transmission of digital materials in the distance education environment are similar to classroom use with some added restrictions to go along with the added provisions.

The following are important points for compliance:

- Only accredited non-profit institutions can utilize the benefits of the TEACH Act.
- An institutional copyright policy must exist in order for the above institutions to lawfully invoke the TEACH Act.
- Faculty have a burden to familiarize themselves with the law; students and staff must be given informational material about copyright compliance.
- Students using distance education materials must be notified of copyrighted materials that are being used in their class with the following notice on the first page of all syllabi, and on the home page of a distance education website:
  
  *Copyright Notice: All materials used in connection with this course may be protected by copyright law.*

- Access to class information must be limited to enrolled students only; Phillips’s course management system restricts the academic period access by username and password to students enrolled in particular courses. No guest access is permitted.
- No systematic circumvention of a copyright owner’s technological controls may occur.
- Performances and displays of a nondramatic literary or nondramatic music may be made without limit (singing an entire song, reading an entire short story, or displaying a nondramatic DVD that is not otherwise restricted by license).
- Dramatic work performances and displays are limited to necessary, minimal portions that would occur in a typical live classroom setting.
- Materials not covered are:

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19 Tomas A. Lipinski, *Copyright Law and the Distance Education Classroom* (Lanham, MD: Scarecrow Press, 2005), 205.
Curricular materials produced or marketed by third parties primarily for performance or display in the distance education classroom. These materials may be obtained by license.\textsuperscript{20}

- Copies not lawfully made.\textsuperscript{21}
- Copyrighted material supplemental (not integral) to distance education teaching activity.\textsuperscript{22}

- Performance and display of copyrighted materials must occur under the direction and supervision of the instructor.
- Materials performed or displayed must be relevant to class instruction.
- Up to 30 copies or recordings of an ephemeral recording (recording of a display or performance used to be loaded on servers, computers, etc.) may be made.\textsuperscript{23}
- One copy of an ephemeral recording may be preserved for archival purposes.\textsuperscript{24}
- All copies of the ephemeral recording must be destroyed after seven years from the date the performance or display was first made to students except for the one archival copy.\textsuperscript{25}
- Before converting analog to digital, faculty must ensure legal, digital copies do not already exist.
- Analog to analog copies are not allowed by the TEACH Act.
- Text-based electronic reserves are not covered by the TEACH.
- Interlibrary loan is not covered by the TEACH Act.
- Licensed materials are not covered the TEACH Act.
- Fair Use is not superseded by the TEACH Act.

\textsuperscript{20}Tomas A. Lipinski, \textit{Copyright Law and the Distance Education Classroom} (Lanham, MD: Scarecrow Press, 2005), 206.

\textsuperscript{21}Tomas A. Lipinski, \textit{Copyright Law and the Distance Education Classroom} (Lanham, MD: Scarecrow Press, 2005), 206.

\textsuperscript{22}Tomas A. Lipinski, \textit{Copyright Law and the Distance Education Classroom} (Lanham, MD: Scarecrow Press, 2005), 206.

\textsuperscript{23}Tomas A. Lipinski, \textit{Copyright Law and the Distance Education Classroom} (Lanham, MD: Scarecrow Press, 2005), 206-7.

\textsuperscript{24}Tomas A. Lipinski, \textit{Copyright Law and the Distance Education Classroom} (Lanham, MD: Scarecrow Press, 2005), 206-7.

\textsuperscript{25}Tomas A. Lipinski, \textit{Copyright Law and the Distance Education Classroom} (Lanham, MD: Scarecrow Press, 2005), 206-7.
• The Good News: Use not permitted by the TEACH Act may be obtained by receiving permission from the copyright owner.

Persons with Disabilities
Section 110 (8) of the U.S. Copyright law allows for the “performance of a nondramatic literary work, by or in the course of a transmission specifically designed for and primarily directed to blind or other handicapped persons who are unable to read normal printed material as a result of their handicap, or deaf or other handicapped persons who are unable to hear the aural signals accompanying a transmission of visual signals, if the performance is made without any purpose of direct or indirect commercial advantage.”26
It is also acceptable “...for an authorized entity to reproduce or to distribute copies or phonorecords of a previously published, nondramatic literary work if such copies are phonorecords are reproduced or distributed in specialized formats exclusively for use by blind or other persons with disabilities, provided that
• Such copies include a note that any further reproduction or distribution in a format other than a specialized format is an infringement and
• Such copies include a copyright notice identifying the copyright owner and the date of the original publication.”27

CHAPEL USE
• Performance of a nondramatic literary or musical work (hymns) or of a dramatic musical work of a religious nature (cantata), or display of a work, in the course of services at a place of worship or assembly is allowed28 as long as the performance is not recorded.


• Making copies of sheet music requires permission or fair use applications. Otherwise, it must be purchased in adequate quantities.  
• See also, Section III “CLASS USE: Music — Sheet music, live performance, and performance of a sound recording.”

HYBRID USE

Multimedia Projects for Instructors and Students

• Multimedia project compliance occurs through applying fair use criteria to each component.  
• Use of multimedia projects in distance education throws compliance into the domain of the TEACH Act.  
• Kenneth Crews states that fair use regarding multimedia creations and their access can be better achieved through tight access controls such as:  
  o Place the finished CD in the library where only students in the class may check it out.  
  o Place the content on a network server that has password controls, allowing only enrolled students to retrieve the materials.  
• Linking to legally posted materials online rather than downloading and uploading them to a course management system, website, or email better complies with copyright law because it is not making a copy or republishing material.  
• Portion limitations not requiring permission to copy:
  o Motion media: Up to 10% or 3 minutes  
  o Text material: Up to 10% or 1,000 words

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Music, Lyrics, and Music Video: Up to 10%, but in no event more than 30 seconds, of the music and lyrics from an individual musical work.

Illustrations and Photographs: No more than 5 images of a photographer or artist, and no more than 10% or 15 images from a collective work.

Numerical data sets: Up to 10% or 2,500 fields or cell entries.

The TEACH Act allows streaming or display of materials for distance education if the amount shown is comparable to that shown in a physical classroom setting. Thus, streaming a whole video may qualify. Copyright author Kenneth Crews points out that “even short clips [from materials] may borrow the most extraordinary or creative elements in them,” which weighs against fair use. Therefore, the amount used is not the only determining factor. Obtaining permission from the copyright holder is recommended if fair use or exemptions under the TEACH Act are in question.

RESERVES

- Reserves are physical copies of legally purchased or copied works held in the library for student access. Electronic Reserves (or, eReserves) are electronic works or portions of works usually digitized and uploaded to an online course for student access.
- Phillips’s course management system restricts access by username and password to students enrolled in particular courses. No guest access is permitted.
- Phillips (library and faculty) uses the Copyright Clearance Center as its copyright licensing agent. Most permissions occur through this agency; all remaining permissions required by Phillips are obtained through the library’s reserves office in order to control liability.

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• Permission is not required to place a copy of text-based material owned by Phillips on the physical library course reserves shelves.
  o Permission, licensing, or applicable fair use is required for the library to reproduce copies of a work, whether electronic or paper, for library course reserves.

Reserves and the TEACH Act: 36
Distance education does not have a specific definition. Because of the hybrid nature of distance education, Phillip’s electronic reserves are not necessarily excluded from the provisions of the TEACH Act. Electronic reserves are considered a way to manage the content of distance education. Access must be restricted to students enrolled in the course, materials must be legally obtained by the Phillips library, and no further downstream distribution must occur.

• Streaming of on-dramatic works may be viewed in their entirety, provided licensing restrictions do not apply.
• Streaming of dramatic works must be limited to an amount comparable to that which is displayed in the course of a live classroom.
• Text-based eReserves are not covered by the TEACH Act and can only proceed under fair use, licenses, or granted permission.
• See also, “HYBRID USE” portion under Section III.

Music and Digital Audio for Class Use and Reserves: “The Music Library Association fully supports this view as well as the consequent view that students enrolled in a class have the educational right to aurally access its assigned musical works both in the classroom and through class reserves. The MLA also believes that the dubbing or digital copying of musical works for class reserves falls within the spirit of the fair use provision of the copyright law.

In light of the above, the Music Library Association supports the creation and transmission of digital audio file copies of copyrighted recordings of musical works for course reserves purposes, under the following conditions:

• Access to such digital copies must be through library-controlled equipment and campus-restricted networks.
• Access to digital copies from outside of the campus should be limited to individuals who have been authenticated: namely, students enrolled either in a course or in formal independent study with an instructor in the institution.
• Digital copies should be made only of works that are being taught in the course or study.
• Digital copies may be made of whole movements or whole works.
• Either the institution or the course instructor should own the original that is used to make the digital file. The library should make a good faith effort to purchase a commercially available copy of anything that is provided by the instructor.
• The library should remove access to the files at the completion of the course.
• The library may store course files for future re-use. This includes the digital copy made from an instructor's original if the library has made a good faith effort to purchase its own copy commercially.\(^\text{37}\)

LIBRARY
Copyright notices required by Section 108 of the Copyright Act are posted by library copy machines.

Copying for student, faculty, and other library users in the Phillips library that does not require permission:
• Library user requests for articles and short excerpts.
  o The Phillips library will make one reproduction that is without any purpose of direct or indirect commercial advantage, and that are for no known purpose other than private study, scholarship, or research.
  o This reproduction becomes the property of the user.
• Archival reproductions of unpublished works.

Up to 3 copies of an unpublished work may be made for preservation or security.
Digital copies are not made available outside the library premises.
Before reproducing, the Phillips library must make every effort to purchase a legal copy at a fair price.

- Replacement of lost, damaged or obsolete copies
  - Up to 3 copies of a published work that is lost, stolen, damaged, deteriorating, or stored in an obsolete format
  - Digital copies may not be placed on a public network.

Library copying that is conditional:
- Library user requests for entire works (book or periodical) if:
  - Authorized reproduction cannot be obtained at a reasonable price;
  - The copy becomes the property of the library user;
  - There is no known reason to believe the copy will be used for any other purpose than private study, scholarship, or research;
  - The copyright notice required by Section 108 is displayed in the area where copying is done.

**Interlibrary Loan**
The Phillips library does not use a commercial document delivery service, which use requires permission.

The Phillips library receives interlibrary loan copies to the extent that they do not substitute for subscriptions or purchases of other works. The Phillips library follows the guidelines established by CONTU (Commission on New Technological Uses) for defining “aggregate quantities:”
- More than five articles from a single periodical title in one calendar year, or
- A total of 6 or more copies of articles published within 5 years prior to the date of request

Periodical titles available through digital licenses may not be available for interlibrary loan.
STUDENT USE

Permission is required for:

- Copying all the assignments from a single book recommended for purchase by an instructor. It is an infringement of copyright to copy all assignments for the purpose of avoiding purchase of the material.
- Making multiple copies of articles or book chapters for distribution to classmates.
- Copying materials from consumable workbooks.

IV. PHILLIPS FACULTY AND INSTITUTIONAL OWNERSHIP POLICY

All Phillips regular faculty members are employees of Phillips. Therefore, under the 1976 Copyright Act, Phillips could assert ownership rights of copyrightable materials created by the faculty. However, following a tradition in the academy, Phillips waives ownership rights of scholarly works (e.g. books, articles, book reviews, videos) created for external audiences, whether for scholarly or commercial purposes, and transfers ownership rights to the creators.

For copyrightable materials created as a condition of employment at Phillips (e.g. all course materials, taught on behalf of Phillips via any delivery method), Phillips waives ownership rights and transfers them to the creators, with the exceptions listed below. Phillips can exercise non-exclusive, royalty-free, perpetual and irrevocable rights to use course materials to promote Phillips’s educational mission with prospective students, churches, accreditation societies, and other constituencies.

Cases for which Phillips retains its intellectual property ownership right or where ownership is shared:

- In general, the administrative work done by faculty members falls under the 1976 Copyright Act as a “work for hire,” the property rights for which are owned by Phillips.
• Phillips and the faculty creator will share ownership of education products created by a faculty member using substantial seminary resources for production, duplication, marketing, and distribution.
• Phillips and the faculty creator will share ownership of program manuals and handbooks (e.g. the Doctor of Ministry Handbook, A Guide to Writing a Research Paper)

For any copyrightable work created by non-faculty Phillips employees fulfilling their responsibilities: Phillips owns the intellectual property rights and grants to the creators non-exclusive royalty-free, perpetual, and irrevocable usage rights.

For any copyrightable work created by adjunct, affiliate, or associate faculty members fulfilling the responsibilities for which they were hired: Phillips owns the intellectual property rights and grants to the creator’s non-exclusive, royalty-free, perpetual, and irrevocable usage rights.
V. APPENDIX

Useful Internet Resources:

ARL Fair Use Infographic

CONFU

Copyright Circular 21

Copyright Clearance Center
http://www.copyright.com/

Copyright Law
http://www.copyright.gov/title17/

Copyright Notice from the Code of Federal Regulations 37 CFR|201.14(b)
http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi

Stanford University Libraries Copyright Tools Page
http://fairuse.stanford.edu/charts_tools/
# Checklist for Fair Use

Name: _______________________ Date: __________ Project: ____________________
Institution: __________________ Project Prepared by: __________________

## PURPOSE

<table>
<thead>
<tr>
<th>Favoring Fair Use</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local Teaching (including multiple copies for classroom use)</td>
<td>Commercial activity</td>
</tr>
<tr>
<td>Research</td>
<td>Profiting from the use</td>
</tr>
<tr>
<td>Scholarship</td>
<td>Entertainment</td>
</tr>
<tr>
<td>Nonprofit educational institution</td>
<td>Bad-faith behavior</td>
</tr>
<tr>
<td>Criticism</td>
<td>Denying credit to original author</td>
</tr>
<tr>
<td>Comment</td>
<td></td>
</tr>
<tr>
<td>News reporting</td>
<td></td>
</tr>
<tr>
<td>Transformative or productive use (changes the work for new utility)</td>
<td></td>
</tr>
<tr>
<td>Restricted access (to students or other appropriate group)</td>
<td></td>
</tr>
<tr>
<td>Parody</td>
<td></td>
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</tbody>
</table>

## NATURE

<table>
<thead>
<tr>
<th>Favoring Fair Use</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Published work</td>
<td>Unpublished work</td>
</tr>
<tr>
<td>Factual or nonfiction-based</td>
<td>Highly creative work (art, music, novels, films, plays)</td>
</tr>
<tr>
<td>Important to favored educational objectives</td>
<td>Fiction</td>
</tr>
</tbody>
</table>

## AMOUNT

<table>
<thead>
<tr>
<th>Favoring Fair Use</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small quantity</td>
<td>Large portion or whole work used</td>
</tr>
<tr>
<td>Portion used is not central or significant to the entire work</td>
<td>Portion used is central to the work or is the “heart of the work”</td>
</tr>
<tr>
<td>Amount is appropriate for favored educational purpose</td>
<td></td>
</tr>
</tbody>
</table>

## EFFECT

<table>
<thead>
<tr>
<th>Favoring Fair Use</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>User owns lawfully acquired or purchased copy of original work</td>
<td>Could replace sale of copyrighted work</td>
</tr>
<tr>
<td>One or few copies made</td>
<td>Significantly impairs market or potential market for copyrighted work or derivative</td>
</tr>
<tr>
<td>No significant effect on the market or potential market for copyrighted work</td>
<td>Reasonably available licensing mechanism for use of the copyrighted work</td>
</tr>
<tr>
<td>No similar product marketed by the copyright holder</td>
<td>Affordable permission available for using work</td>
</tr>
<tr>
<td>Lack of licensing mechanism</td>
<td>Numerous copies made</td>
</tr>
<tr>
<td></td>
<td>You made it accessible on the Internet or in other public forum</td>
</tr>
<tr>
<td></td>
<td>Repeated or long-term use</td>
</tr>
</tbody>
</table>

Checklist for the TEACH Act

Name: __________________________ Date: __________ Project: __________________________

Institution: __________________________ Prepared by: __________________________

**TEACH Act requirements that will likely fall within the duty of the instructor:**

1. The work to be transmitted may be any of the following:
   - ☐ A performance of a nondramatic literary work; or
   - ☐ A performance of a nondramatic musical work; or
   - ☐ A performance of any other work, including dramatic works and audiovisual works, but only in “reasonable and limited portions”; or
   - ☐ A display in an amount comparable to that which is typically displayed in the course of a live classroom session.

2. The work to be transmitted may not be any of the following:
   - ☐ Marketed primarily for performance or display as part of a digitally transmitted mediated instructional activity; or
   - ☐ A textbook, coursepack, or other material in any media which is typically purchased or acquired by students for their independent use and retention.

3. Any permitted performance or display must be both:
   - ☐ Made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of the systematic, mediated instructional activities of the educational institution; and
   - ☐ Directly related and of material assistance to the teaching content of the transmission.

4. The institution does not know or have reason to believe that the copy of the work to be transmitted was not lawfully made or acquired.

5. If the work to be used has to be converted from print or another analog version to digital format, then both:
   - ☐ The amount of the work converted is no greater than the amount that can lawfully be used for the course; and
   - ☐ There is no digital version of the work available to the institution or the digital version available to the institution has technological protection that prevents its lawful use for the course.

6. The institution for which the work is transmitted is an accredited nonprofit educational institution.

7. The institution has instituted policies regarding copyright.

8. The institution has provided information materials to faculty, students, and relevant staff members that describe and promote U.S. copyright laws.

9. The institution has provided notice to students that materials used in connection with the course may be subject to copyright protection.

10. The transmission of the content is made solely for students officially enrolled in the course for which the transmission is made.

**TEACH Act requirements that will likely fall within the duty of the information technology officials:**

11. Technological measures have been taken to reasonably prevent both:
   - ☐ Retention of the work in accessible form by students for longer than the class session; and
   - ☐ Unauthorized further dissemination of the work in accessible form by such recipients to others.

12. The institution has not engaged in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent retention or dissemination of their works.

13. The work is stored on a system or network in a manner that is ordinarily not accessible to anyone other than anticipated recipients.

14. The copy of the work will only be maintained on the system or network in a manner ordinarily accessible for a period that is reasonably necessary to facilitate the transmissions for which it was made.

15. Any copies made for the purpose of transmitting the work are retained and used solely by the institution.