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# COPYRIGHT FOR ACADEMIC LIBRARIANS AND PROFESSIONALS

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REBECCA P. BUTLER



An imprint of the American Library Association  
Chicago 2014

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Printed in the United States of America

18 17 16 15 14 5 4 3 2 1

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ISBN: 978-0-8389-1214-0 (paper).

#### **Library of Congress Cataloging-in-Publication Data**

Butler, Rebecca P., author.

Copyright for academic librarians and professionals / Rebecca P. Butler.

pages cm

Includes bibliographical references and index.

ISBN 978-0-8389-1214-0 (softcover : alk. paper)

1. Copyright—United States. 2. Academic librarians—United States—Handbooks, manuals, etc. I. Title.

KF2995.B875 2014

346.7304'82—dc23

2014000997

Book design in the Adobe Caslon Pro and Univers typefaces by Alejandra Diaz.

© This paper meets the requirements of ANSI/NISO Z39.48-1992 (Permanence of Paper).

*To Tom and Benj, you are the lights of my life!*

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# PREFACE

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Over the past seventeen years, I have conducted copyright workshops, classes, and presentations for college and university librarians and faculty; K–12 teachers and school librarians; public, medical, and other librarians; technology coordinators; school administrators; higher education students; and other interested parties. They came to these sessions for much the same reason that you picked up this book—they realized the importance and complexity of copyright issues in education – and beyond – and wanted help. *Copyright for Academic Librarians and Professionals* is largely based on the questions and concerns raised by those in my workshops, presentations, and classes, as it speaks to the needs of college and university librarians, technology specialists, and faculty, and it recognizes how copyright fits into your professional lives. In this book (similar in theme, concept, and format to that of my books written for K–12 educators), I have included copyright information and flow charts relevant in today’s world, as well as addressed new and upcoming mediums in terms of copyright law.

*Copyright for Academic Librarians and Professionals* is, first and foremost, a handbook on copyright law for college and university librarians, faculty, technology specialists, and more who work in higher education environments. In addition, the information included in this book can be used by, or taught to, undergraduate and graduate students, as well as used by others in need of copyright advice. I have chosen to use realistic examples with interpretations of the law from copyright experts in the field. Although reading and interpreting the United States Copyright Law for oneself would be one approach, librarians and faculty may choose to use the interpretations from copyright experts given in the book, so that they don’t have to wade through the law on their own. Because copyright law leaves some gray areas, there may be more than one interpretation to any one question. Since that is the case, I have chosen to give the readers the answer I consider most practical and most applicable in a college or university setting. For other concerns, or for further information, you may refer to the law itself, at [www.copyright.gov/title17/](http://www.copyright.gov/title17/).

This book is divided into two practical and necessary parts. Part I introduces the general concepts associated with copyright law. Part II describes the specific applications of copyright law as they affect nine different formats. It is important to use and understand both parts of this book, as they speak to each other. Knowing the general concepts will help your understanding and use of the specific applications. In the same way, knowing how copyright applies to your position in education will help you better understand and read the copyright legislation and literature you encounter in your day-to-day work. While you may refer to the chapters of part II more frequently than part I, you won't completely understand the information in part II without having first read part I.

Through the five chapters of part I, readers will develop a basic knowledge of the language and provisions of copyright law. Chapter 1, "Introduction to Copyright Law: What Is It and Why Is It Important in Higher Education?" provides a basic explanation of copyright, a history of legislation, its importance, how it affects media, and the policies and ethics associated with copyrighted materials. Chapter 2, "Fair Use: Is It Necessary to Ask for Permission?" introduces readers to the four factors of fair use that will help them make the best decisions for using materials, as well as to other parts of the law specifically of importance to educators: the classroom, handicap, and library exemptions. This chapter also provides some information on state copyright laws and on guidelines for the popular educational multimedia materials faculty and librarians often use. Chapter 3, "Public Domain: Is Anything Really Free?" answers questions concerning one of the most speculated-about aspects of copyright—public domain materials. This chapter explains public domain, including how something becomes public domain; identifies what media are in the public domain, as well as the relation of government documents to public domain; and discusses how you can identify public domain works. Chapter 4, "Obtaining Permission: In What Ways Can We Legally Obtain Permission to Use Others' Works?" gets to the core and function of this book. This chapter outlines permissions (what are they and how they work) and helps you understand their relationship to clearinghouses and licenses. Chapter 4 also explains how to write a permission letter, what goes in it, and an example of an effective letter. Chapter 5, "Other Important Copyright Information: What Else Do We Need to Know in Order to Function Legally within Copyright Law?" explains some of the remaining issues including international copyright law, plagiarism and citation, open-sourcing/Creative Commons, and violations and penalties.

Chapters 6 through 12 in part II cover specific applications of copyright law to the Internet, including blogs/vlogs, podcasts, wikis, social networking tools, and more; movies, DVDs, CDs, and television; computer and gaming software; music and audio; multimedia; and print works. Although librarians and other higher education personnel are familiar with terms such as *media* and *mediums*, for the purpose of this book, I have chosen to use the word *work* to represent these items as it is the more common term used with copyright law. Each chapter explains fair use, public domain, documentation and licenses, permissions, creation and ownership, violations and penalties, international copyright law, and

avoiding copyright problems as they relate to the specific works. These are chapters that you can consult as the issues arise or read over to become more familiar with the formats you use most often. Chapter 13, “Distance Learning and Copyright Law: This Is Confusing! How Can We Share Materials with Our Students and Still Comply with the Law?” also covers the points found in chapters 6 through 12. In addition, it discusses the Digital Millennium Copyright Act (DMCA) and the Technology, Education, and Copyright Harmonization (TEACH) Act and how these relate to the many aspects of distance education. Chapter 14, “Conclusion: What Does All of This Mean for Librarians and Other Higher Education Professionals?” brings it all together and provides some last-minute advice for avoiding problems, how to deal with pressure to break the law, and how and why to teach students and faculty the importance of copyright law.

Copyright law is something that you have probably always been aware of, but that perhaps you have never closely examined or understood. The truth is that copyright is an everyday part of your function as a college/university librarian, technology specialist, or faculty member, and it requires your full attention and knowledge. This guide is meant to be a quick and thorough look into the implications of copyright in higher education. In it, I have answered many of the common questions I have encountered in my classes, presentations, and workshops, while still expanding and fleshing out this source so that it anticipates even the questions that were not asked. In truth, copyright should be a part of education. Thus, it is necessary to be aware of the various facets of copyright and use them to your own and your students’ advantage. Please be aware that I am a university professor who researches, writes, and presents in the area of copyright law, and that the information in this book does not substitute for advice from an attorney.

# ACKNOWLEDGMENTS

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I would like to thank the college and university librarians and interested faculty and staff whose requests for information on copyright in a “non-legalese” manner have culminated in this book. Additionally, I would like to thank my library information specialist and instructional technology students, other interested master’s and doctoral students, and graduate assistants at Northern Illinois University and East Tennessee State University who have participated in my copyright classes and workshops over the past fifteen years and asked insightful questions on the subject. Lastly, I wish to express my appreciation for the support of family and friends, especially my husband, Tom, and my son, Benjamin, who read over drafts, made comments, and helped create flow charts. I cannot thank you enough!

# PART I

## Copyright Fundamentals

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# Introduction to Copyright Law

## What Is It and Why Is It Important in Higher Education?

**C**opyright is a very confusing area of U.S. law—one that can be argued to have an ethical component, since it is possible that the only person who knows whether copyright law is being violated is the individual copying or borrowing the work. Because it is written in a manner that opens it to many interpretations, copyright law is especially of concern in a college or university setting, where librarians, professors, instructors, administrators, technology coordinators, students, and others may think, “We can copy all we want, because it’s for education.” If the copyright owner has granted consent for use of his or her work, then there is no problem. Frequently, however, the dilemma is that the borrower does not have the time or inclination (or is unable) to locate the owner in order to determine if desired use of a work is legal.

Often, in the world of academia we tend to think that we will not get caught if we borrow without obtaining permission from the work’s owner. After all, academics “push the envelope” often, it takes time we do not have to research for copyright permissions, and who has really heard of copyright police? There is also the opposite approach, for example, when a department chair may demand that absolutely no copying occur in his or her division. Here, the misconception is that all copying is illegal. In actuality the answer lies somewhere in between. As faculty and librarians, we deal with communication technologies in a wide variety of formats, from books to movies and music to the Internet. We are usually busy and often searching for something to use at the last minute. Borrowing a few pages out of a textbook for a math class to take home over the weekend, copying another piece of music

for the drum section, or using a popular song for a vocal podcast may seem the easiest ways to go. After all, who is going to know? That the owner of the copyrighted work may lose money or control over his or her product is not our concern. Below are some of the questions that we should ask as we go about our daily responsibilities as academics.

Can you change a digitized image so that using it is not a copyright infringement? What can you legally put on a wiki? Are there copyright concerns when you use a social network, like Shelfari or Facebook, for a class communication tool? Do you need special permission from Internet authors to use their works? Can you print anything you want off a CD-ROM? Is it okay to copy a television program and use it as part of a class unit? Legally, is it possible to show a DVD rented from a video store/vendor in a face-to-face class? Can an instructor lawfully retain students' completed assignments to use in future classes or to show as "best examples"? If you want to copy a magazine article thirty times for a reading assignment, can you do this under copyright law? College and university educators often ask such questions as they develop curriculum, prepare lessons, and otherwise go about their daily teaching duties. In addition, they ask questions dealing with research as well. Examples of this might be: can we borrow videos from another person's project to analyze for our research? Who owns our research, if we get a grant? Can we change the format of old interviews from reel-to-reel tapes to digital so that we can study them easier? All of these questions deal with copyright, perhaps the most well known of our intellectual property rights. These questions and more will be asked and answered in the next few chapters, along with other copyright topics.

As you use this book, please note that there are three similar terms: U.S. Code, U.S. Copyright Law, and the U.S. Copyright Act. Although they are all related, each one is somewhat different from the other two. The U.S. Code "is the codification by subject matter of the general and permanent laws of the United States." It is divided by broad subjects into fifty titles and published by the Office of the Law Revision Counsel of the U.S. House of Representatives (U.S. Code 2009, 1). One part of the U.S. Code is Title 17. Chapters 1–8 and 10–12 of Title 17 contain the United States Copyright Law. This is the U.S. law that is concerned with copyright and, thus, the one we use in this book to interpret our copyright questions. ("Chapters 9 and 13 of title 17 contain statutory design protection that is independent of copyright protection" [U.S. Copyright Office 2010c: Preface].) The Copyright Act is part of the U.S. Copyright Law. Passed in 1976, the Copyright Act "provides the basic framework for the current copyright law" (U.S. Copyright Law 2002: 1). In broad terms, this means that the Copyright Act is a piece of U.S. Copyright Law, which is one part of the U.S. Code (all the laws of the United States). For the purposes of this book, we focus on U.S. Copyright Law. Please note that the complete Copyright Law is available in a variety of places, including the United States Copyright office's website ([www.copyright.gov](http://www.copyright.gov)), and in print for \$32.00, from the U.S. Government Bookstore (U.S. Copyright Office 2011).

## **COPYRIGHT DEFINED AND EXPLAINED**

Below is a brief definition of copyright and what it means to those of us in higher education.

### **Definition**

“Copyright is a statutory privilege extended to creators of works that are fixed in a tangible medium of expression” (Bruwelheide 1995, 4). Owners of copyrighted works have the exclusive right, by law, to

- reproduce or copy;
- distribute;
- publicly perform;
- publicly display, and
- create derivatives.

Copyright law violations occur when someone other than the owner attempts to use works in one of the manners described above (Butler 2000).

### **Things That Can Be Copyrighted**

Almost anything originally created is copyrightable, that is, it can be or is registered with the U.S. Copyright Office. Figure 1-1 below lists examples of works that can be copyrighted.

A note worth mentioning concerning the concept of “originality” is that the perception of an original work is that it “reflects the personality of the maker” (Ploman and Hamilton 1980, 31). Thus, two different people may write stories about voice classes at the Peking Opera School, and both stories can be copyrighted—assuming that each story is sufficiently unique. Because this can be confusing, sometimes courts make the decision as to whether or not a work is “truly” an original (Ploman and Hamilton 1980).

### **Automatic Copyright**

Under current copyright law, almost anything a person creates is automatically copyright-protected, whether it is officially registered or not. Thus, every e-mail you send, every paper your students write, or every digital picture you take is protected. What this means for college and university educators is that if the football coach creates a blog to supplement football practice, a student writes an original paper on John Brown, or an art professor films a video of his or her students’ artwork, all have created copyrightable works. If you like, you may put a © on everything you or your students create. This shows those who view/listen/use your work that it is copyright-protected, whether officially registered with the U.S. Copyright Office or not. (Official registration of copyright is addressed later in this chapter.) Remember: in the instance of a lawsuit, those items registered with the U.S. Copyright Office have a stronger chance of winning than do those that have only been “unofficially” copyrighted; that is, not recorded with the U.S. Copyright Office (Bruwelheide 1995).

FIGURE 1-1

**Works That Can Be Copyright-Protected**

| PRINT              | NONPRINT  | INTERNET  |
|--------------------|---|---|
| Articles           | Architecture  | Blogs/Vlogs   |
| Books              | Audio Recordings  | Digitized Graphics, Movies,<br>and Advertisements           |
| Letters            | CD-ROMs   | E-Mails   |
| Newsletters        | Computer Software   | Nings   |
| Newspapers         | DVDs  | Podcasts  |
| Plays and Musicals | Games   | Social Networks   |
| Poems              | Modern Dance<br>and Other Public<br>Performances,<br>including Pantomimes<br>and Choreography | Web Pages   |
| Sheet Music        | Multimedia  | Wikis   |
| Other Print Works  | Paintings   | Other Digitized Works<br>Available on the<br>World Wide Web |
|                    | Photographs   |   |
|                    | Statues   |   |
|                    | Television Programs   |   |
|                    | Videos  |   |
|                    | Other Nonprint Works  |   |

**Who Owns the Copyrighted Work?**

Usually the person or group who creates a work owns the copyright; for example, a student who digitizes a series of stories that he has written for English class would probably own the rights to his stories. However, it is possible for individuals or companies to own works they did not create. This can occur in one of two ways. The first is when the creator transfers or assigns copyright ownership to a third party. Thus, it is possible for a technology coordinator to create a web page about child care among penguins on his or her own time and sell the copyright to an educational Internet company. The second way is “work for hire.” This is when work is considered the property of the organization that hired the individual or group to do the work. For example, a reference librarian uses his free time for several weeks to write up a new policy on student reference interviews. He was asked to create this policy by the library dean, he is doing it on university time, and he uses a university computer. Such a situation may be considered “work for hire.” Another example is if a mathematics professor, at home, creates a digital math game for an educational software company. If she signs a

contract with the company stating that it is “work for hire,” the professor does not own what she has created. Instead, she is paid a fee by the company, which then may register the game with the U.S. Copyright Office.

### **Derivative Works**

Derivative works are items created by changing an already existing work. The extent of change to the work can be slight, moderate, or a great deal. Take a graphic of an elephant, for example. A web designer has created an elephant for her website. A technology student finds the elephant graphic and borrows it, adding a red hat to its head. The elephant with a red hat is an example of a derivative work. Another example of a derivative work is when a dance class instructor takes a set of original dance moves borrowed from a musical and changes them slightly to fit a dance number that her class is presenting at a workshop. When works are changed somewhat—but not completely—a derivative work is the result. When derivative works are created from copyrighted works, without the proper permissions or licenses, this is an infringement of copyright law.

### **What Copyright Law Is Not**

Copyright is only one of several intellectual property rights addressed in a general manner, in the U.S. Constitution: “exclusive rights to . . . respective writings and discoveries” (1788). Other intellectual property in the United States includes (1) patents (issued by the government, for a specific period of time, in order to monopolize an invention); (2) trademarks (logos, symbols, sounds, etc., which distinguish products from one another); and (3) trade secrets (information that makes an item competitive). (Silver 2003; Wherry 2008)

## **HISTORY OF COPYRIGHT**

Those not interested in history might wonder, “Why is the history of copyright important to my students and me?” Most librarians and many university faculty have their eyes on the future, on new technologies and how to use them in the classroom. As will be seen from the discussion below, however, while copyright is often seen as a relatively new concern, especially with new technologies, it has, in fact, been around for some time. Understanding where it has been before can help with thinking about where it will go in the future. “One way we have of sensing the future is to look back into the past” (Saltrick 1995, 1).

Copyright in the United States is greatly influenced by English common law. For example, the Statute of Anne of 1710, noted as the beginning of contemporary copyright law, provided for protecting authors’ literary property for a limited number of years (Tryon 1994). Notions of copyright in the future United States are seen as early as 1672, when bookseller John Usher’s petition to the General Court of the Massachusetts Bay Colony resulted in a private copyright for his revised edition of *The General Laws and Liberties of the*

*Massachusetts Colony* (Bettig 1996; Usher's Printing Privilege 1672). About 100 years later, such prominent citizens of the fledging United States as Noah Webster and Thomas Paine worked to promote state copyright law. (In the 1780s, state copyright laws were passed by all thirteen original colonies as a result of Noah Webster's work to protect his writings. This was necessary because the Articles of Confederation did not provide federal copyright protection [Bettig 1996; Peterson 2003].) The first federal copyright legislation was signed in 1790 by President George Washington. Congress was given the 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" (U.S. Const., art. I, sec. 8). This law was later expanded and revised in 1831, 1879, 1909, 1976, and 1998. It is the basis of intellectual property rights in our country today, and continues to be modified. At any given point in time, a number of bills dealing in some way with copyright sit in our nation's House and Senate awaiting action (Butler 2003). Many new bills cover digital works, including Internet applications, television broadcasting, DVDs, and more. Indeed in the 21st century, "one of the primary reasons for copyright law is . . . the protection of the owners and creators to earn money and recognition for those things that they own or create" (Butler 2003, 39).

## **WHY COPYRIGHT LAW IS IMPORTANT**

Copyright is important in that it protects creators and owners' rights to their works. Copyright legislation grants the owner the "exclusive right to reproduce, prepare derivative works, distribute, perform and display the work publicly. Exclusive means only the creator of such work, not anybody who has access to it and decides to grab it" (Whatiscopyright.org 2010, 1). However, copyright law also helps the user of the work, in that the owners' rights are limited (see chapters 2 and 3). As such, this law actually represents both the owners and the users of works.

It is helpful here to look briefly at owners and users of works—usually two distinctive groups. Owners are those individuals or groups who either created a work or obtained the copyright for it. Usually, owners are looking for assurance that the rights they own are not being infringed upon. Users of works are those individuals or groups who wish to borrow all or part of a work for their own employ. For example, suppose you are a library instruction librarian and you wish to borrow a series of research activities from a workbook for use with the freshman class. In addition, you plan to photocopy these activities and share them with colleagues who also do library instruction. It is very possible that in pursuing either activity, you would be violating the rights of those who own the copyright to the workbook activities. These two distinct groups (owners and users) are what keep the issue of copyright going, year after year, generation after generation. Next, you will learn how to officially register a work you have created with the U.S. Copyright Office.

## HOW TO REGISTER WORKS WITH THE U.S. COPYRIGHT OFFICE

Usually when you think of copyright, you think in terms of how much you can borrow without getting permission from the owner or creator of the book, movie, audio file, web page, or whatever it is that you want to copy. However, look at this subject from a different approach—how can you obtain an official copyright for something you have created?

Assume that you are a retired professor with a hobby in astronomy. As a former professor, you have decided to try your hand at creating units on astronomy for undergraduate and graduate students. You have written a number of units, created on your own time, at home, with your own software and computer. These have not been used in the classroom. You compile the units into manuscript form, with the idea that perhaps an educational publishing firm would be interested in them. Before you send them out for review, you would like to obtain official copyright registration for your work. How do you go about doing this?

### Contacting the Copyright Office

Your first step is to contact the U.S. Copyright Office at the Library of Congress. They can be reached online, by phone, or through the U.S. Postal Service. If you are contacting them by phone or mail, tell them that you want to register your manuscript with their office, and they will send you the materials you need via snail mail. Online forms and application instructions, as well as other copyright information, are also available on the Internet at ([www.loc.gov/copyright](http://www.loc.gov/copyright)).

### Registering Your Work

Be aware that any kind of work that can be copyright-protected can be registered with the U.S. Copyright Office. While print forms, such as TX (literary works), VA (visual arts works), SR (sound recordings), and more are still available via mail from the U.S. Copyright Office, it is easier and cheaper to register a work online. Go to the Electronic Copyright Office at ([www.copyright.gov/eco](http://www.copyright.gov/eco)) and access the detailed PowerPoint, tutorial (PDF format), and/or online tip sections for all instructions and materials.

Concerning the example above, where you are a retired professor who has created astronomy units in manuscript form for publication, you could file online at any time of the day or night (except Sunday from midnight to 6 a.m. Eastern time) for a \$35.00 fee, or receive the TX form by mail for \$65.00 (Electronic Copyright Office 2012). Other works that can be assigned copyright registration include lyrics, music, plays, movies, scripts, pantomimes, choreography, sound recordings, cartoons, comic strips, photographs, architectural works, games, multimedia works, various digital formats (for example, wikis, podcasts, and so on), and recipes.

Note that there are some works that cannot be registered by the Copyright Office. Such works include those protected by another intellectual property, such as a patent or those

that are not entitled to protection, for example works that are not set in a fixed form (Torrans 2003). In addition, works that cannot be copyrighted include ideas, methods, blank forms, names, titles, slogans, short phrases and “works that consist entirely of information that is common property and containing no original authorship”; among these are “standard calendars, height and weight charts, tape measures and rules, and lists of tables taken from public documents or other common sources . . . mere listings of ingredients or contents, procedures, systems, processes, concepts, principles, discoveries, or devices” (Torrans 2003, 40).

Information needed by the U.S. Copyright Office, in order to register a work, includes such things as title, name and address of author, name and address of owner, year of creation, publication date (if applicable), type of authorship, name and address of permission contact person, format of the item, and where the copyright certificate is to be sent (U.S. Copyright Office 2010).

### **When Does Your Work Receive Copyright Registration?**

“Whatever time is needed to issue a certificate, the effective date of registration is the day the Copyright Office receives a complete submission in acceptable form. You do not need to wait for a certificate to proceed with publication” (U.S. Copyright Office 2010). Therefore, if your work can be registered for copyright protection, it will be protected immediately upon all required information and materials being received by the U.S. Copyright Office.

### **When Will You Find Out If Your Work Received Copyright Registration?**

Normally, the person(s) requesting copyright registration will receive an e-mail notice of receipt of materials from the U.S. Copyright Office, if applying online, with the registration certificate arriving in approximately nine months. If applying with paper forms, no receipt will be sent and the registration certificate, which the work’s owner would take delivery of, could be sent up to twenty-two months after the first contact with the U.S. Copyright Office (U.S. Copyright Office 2010).

### **U.S. Copyright Office Contact Information**

U.S. Copyright Office  
101 Independence Ave. S.E.  
Washington, D.C. 20559-6000  
(202) 707-3000  
Internet: [www.copyright.gov](http://www.copyright.gov)

## **CONCLUSION**

Have you ever infringed on someone’s copyright while pursuing your teaching activities, researching, or doing library work? Have your colleagues? If you and those that you work with are completely honest, undoubtedly the answer is “yes.” Let’s take a look at some of the

ways that you might infringe on an individual or group/organization/company's copyright in your professional lives. Have you or a colleague:

- added part of a commercial video, which supported a particular curricular unit, to an online educational site, such as TeacherTube?
- loaded a piece of computer software that a student brought in onto more than one classroom computer at the same time (without reading the documentation, which might state that such use is illegal)?
- burned a music CD to several blank CDs, so that students could listen to it in small groups while working on group projects?
- “borrowed” liberally from a web page that you liked to create one of your own?
- copied an extra script of a play for the new student director?
- scanned and posted an entire book on your Blackboard site? (You really wanted everyone to read it, and you only had your own copy.)
- “borrowed” a survey from a dissertation to use in your own research?

This list could go on and on. Without proper permissions or other exemptions, all of these points above and more could be considered copyright infringements. Indeed, abuse of U.S. copyright law probably occurs every day in higher education. Whatever the case, it does not mean that you need to continue along such lines—there is hope! Using this book, it is possible to follow the law, rather than rationalize reasons for not doing so. Now, continue on to chapter 2, for a discussion of fair use, one of the areas of copyright law of most importance to education.

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