

**FAIR USE GUIDELINES AND COPYRIGHT LAWS:  
AN EDUCATOR'S POTPOURRI OF LAW WITH REAL-LIFE SCENARIOS  
PRESENTED BY ANNE DALTON, ESQUIRE IN CONJUNCTION WITH THE  
BOARDS OF COOPERATIVE EDUCATIONAL SERVICES OF NEW YORK STATE  
MARCH, 2015**

**FINE-TUNING STUFF**

**1. FORMAT**

The format is a blend of presentation by me and interaction through discussion of scenarios. Everyone will be asked to link up with a group (see below). Each group will need one spokesperson and one alternate spokesperson. I will call on the groups at random to answer questions outlined in the scenarios, and then we will discuss those answers briefly.

- If there are 20 people, I would ask that there be 5 groups of 4 people each.
- If there are 25 people, 5 groups of 5 persons each.
- If there are 30 people, 6 groups of 5 persons each.
- If there are between 30 and 40, 6 groups of 5-6 persons each.
- Each group should be segregated from the others, and comfortably turned inward so they can all share the thought process without being excluded from the PowerPoint presentation.
- People usually want to sit with their friends or colleagues, which sometimes results in a group of 10 and a group of 2, etc. If you can assist in getting the groups evened out, that would be great!

**2. QUESTIONS**

I will bring index cards for people to write individual questions. Each person should bring their own pen. It would be helpful if people write their names on the cards but it's ok if they want to be anonymous too! Depending on where we are before lunch, I'll try to address questions in the morning and afternoon, but definitely in the afternoon!

**3. TECHNICAL ASSISTANCE AND SET-UP**

Please have a microphone, projector, and screen available. Thanks! Let me know what time I can come in to set up. If possible, and if it's not a hassle, I usually like to set up before people start coming in because it's fun to circulate around the attendees and chat a bit.

**4. PHOTOGRAPHS OF THE PRESENTATION**

The presentation has a LOT of photographs. Most of them are being used under a restricted license, and I will unfortunately have to ask attendees not to photograph the slides up on the screen. Usually people are really good about that, but I wanted to mention it in advance.

Thank you so much! Looking forward it to.

Anne Dalton 3/4/15

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**PART ONE: COPYRIGHT INTRODUCTION**

- Nugget #N-1: Structure of this workshop
- Tools in your copyright toolbox
- Warm-up: Bell-ringer: Pop Quiz (5 questions)
  
- A. Copyright Basics (**Hand-out H-1: Creator's Analysis – Dalton Mind Map**)
  - Leaping from the 18<sup>th</sup> to the 21st Century
  - What is protected by Copyright? (*The Reindeer*)
    - Outside the Copyright Law: facts, ideas, titles, names
    - Inside the Copyright Law: "Original and Tangible"
    - **Scenario #S-1:** Ziva and Izzy
  
  - What is a Copyright? (*The Cloud*)
    - Monopoly – Creator – Time
    - Nugget #N-2: Holy Cow, How Did *THAT* happen? Joint Copyright and Consultants
    - Time: Creator's Life + 70 Years (as of 1/1/78)
    - Time: Public Domain before 1923 (Lurking Copyright Interests)
    - Time: Between 1923 and 1978 – depends on creator's renewal
    - **Hand-out H-2:** When U.S. Works Pass into the Public Domain – Gasaway
    - **Hand-out H-3:** Finding the Copyright Expiration Date – Dalton PowerPoint Slide
    - Notice: Poor, better, best
    - **Hand-out H-4:** Registration with the U.S. Copyright Office (2 pages)
    - Notice: Copyright, Year of Creation, Name of Copyright Owner
    - Nugget #N-3: Internet Artwork - Lack of Copyright Notice Does Not Mean Free!
    - **Scenario #S-2:** Puppies, Etsy, Facebook and LaDonna's Hand-outs
  
- B. Public Domain
  - Time – Prior to 1923; maybe between 1923-78 (if copyright not renewed)
  - Government – Federal - State and Local - Federal Independent Contractors
  - By choice (Creative Commons, freeware, shareware, graffiti)
  - **Scenario #S-3:** John Philip Sousa, Pocahontas, and Your Happy Poet
  
- C. Copyright Ownership (**Hand-out #H-1 again – the Dragon**)
  - Bundle Of Exclusive Rights - jar of pencils
    - Reproduce, distribute, perform, display, derivatives – Harper Lee
    - Educators and Copyright
  - **Scenario #S-4:** The Legend of Snowy Hollow

**PART TWO: THIRD-PARTY CONTENT a/k/a USING OTHER PEOPLES' WORK**

- Your Copyright Toolbox
- **Hand-out #H-5:** *Use of Third Party Material by Educators - Dalton Mind Map*
- Nugget #N-4: Hyperlinks Are Always Ok
  
- D. License
  - Waiver of Fair Use and Exemptions - Read the Fine Print
  - Netflix and You – It's a Beautiful Thing
  - Nugget #N-5: Never Forget the Elephant in the Room – Your District Contract
  - Live Performance License and Derivative Uses
  - Nugget #N-6: Licensed E-books and Apps – No Download to Anyone Else!
  - Nugget #N-7: Database Licenses - Personal liability for stolen passwords/user names
  - Professionalism Tip: Can I sell you Niagara Falls? How about some swampland?  
Make sure you get what you pay for!
  - First Sale Doctrine – not apply to digital or electronic items
  
- E. Introduction to Teaching Exemptions under §110 of Copyright Law
  - **Scenario #S-5: The AKS Workbook and Bridget the Overzealous Copier**
  
- F. Exemption – Face-to-Face Teaching -17 USC §110(1) (The Jellyfish)
  - Nugget #N-8 Exemption under §110 applies to both teacher and student activities
  - Display and/or Performance of Work
  - Must relate to curriculum – not just to keep the students busy!
  - Instructional, Face-To-Face, Nonprofit Classroom
  - Work must be lawfully made (Audiovisual Works)
  - Copies not allowed
  
- G. Exemption - TEACH Act – 17 USC§110(2)
  - **Hand-out #H-6:** *Owl and German Shepherd*
  - *E-Reserves*

**NOTES**

### **PART THREE: FAIR USE**

#### H. Introduction to Fair Use

- Fair Use - Defense to Copyright Infringement Claim
- 4 Categories – news reporting, research & scholarship, teaching, criticism & comment
- **Hand-out #H-7: Fair Use Fact Sheet, FL-102, U.S. Copyright Office**
- Classroom Guidelines not valid - *Cambridge U. Press v. Georgia State*, fall, 2014
- No Magic # of Words; No Magic % of the Work
- **Hand-out #H-8: Fair Use Checklist Columbia University – 2 pages**
- Four Factors – purpose/character; nature; amount/substantiality; effect on market
- “Holistic Analysis” – overall perception
- Transformation – “new expression, meaning or message”; “reasonable observer”
- Nugget #N-9: Facts in copyrighted work are ok to use

#### I. Fair Use – Teaching – 17 USC §107 (The Mallard Duck)

Fair Use – Criticism and Comment – 17 USC §107 (The Kangaroo)

- **Scenario #S-6: Gerald Ford, *A Time To Heal***
- **Scenario #S-7: Silk Sandals by Gucci and Niagara Falls**
- **Scenario #S-8: Cultural Diversity, Francis Ford Coppola and Travis**
- **Scenario #S-9: Food Chain Barbie**

## **NOTES**

**PART FOUR: FREQUENT EDUCATIONAL DILEMMAS AND HOW TO SOLVE THEM**

- J. Online Service Providers/Your ISP
  - o Digital Millennium Copyright Act
  - o "Take-down Notice"
  - o Safe Harbor
  - o Streaming Media
  
- K. Copying, Copying, Copying
  
- L. Invasion of Privacy
  - o Releases
  - o Videotaping football games, recitals, concerts, school plays and Storing User-Created Content
  
- M. Interlibrary Loans & E-Reserves
  - o Scanning into computer: derivative
  - o Pulling material up: display
  - o If audio/visual: performance
  - o Sending digital reserves over the Internet: transmitting
  
- N. Q and A

**NOTES**



## **BOCES COPYRIGHT NUGGETS**

### **1. WORKSHOP STRUCTURE**

- Spot if there is a copyright issue
- Determine if the material can be used legally

### **2. JOINT COPYRIGHT**

- Creation of work by 2 or more with intent to merge contributions into one work
- Working with consultants: copyright transfer requires (a) specific writing, which is (b) signed by the consultant.

### **3. INTERNET ART: LACK OF COPYRIGHT NOTICE $\neq$ FREE TO USE**

- Might be stolen from copyrighted website
- Might be illegal photograph of a city sculpture
- Might be uploaded from a “fair use” PowerPoint
- The “free” website won’t protect you
- Ignorance of the law is no excuse

### **4. GIVING STUDENTS HYPERLINKS TO ORIGINAL MATERIAL IS OK**

### **5. NEVER FORGET THE ELEPHANT IN THE ROOM: YOUR DISTRICT’S CONTRACT!**

### **6. DON’T SHARE LICENSED E-BOOKS AND APPS. DOWNLOADING THEM TO ANYONE ELSE VIOLATES COPYRIGHT LAW.**

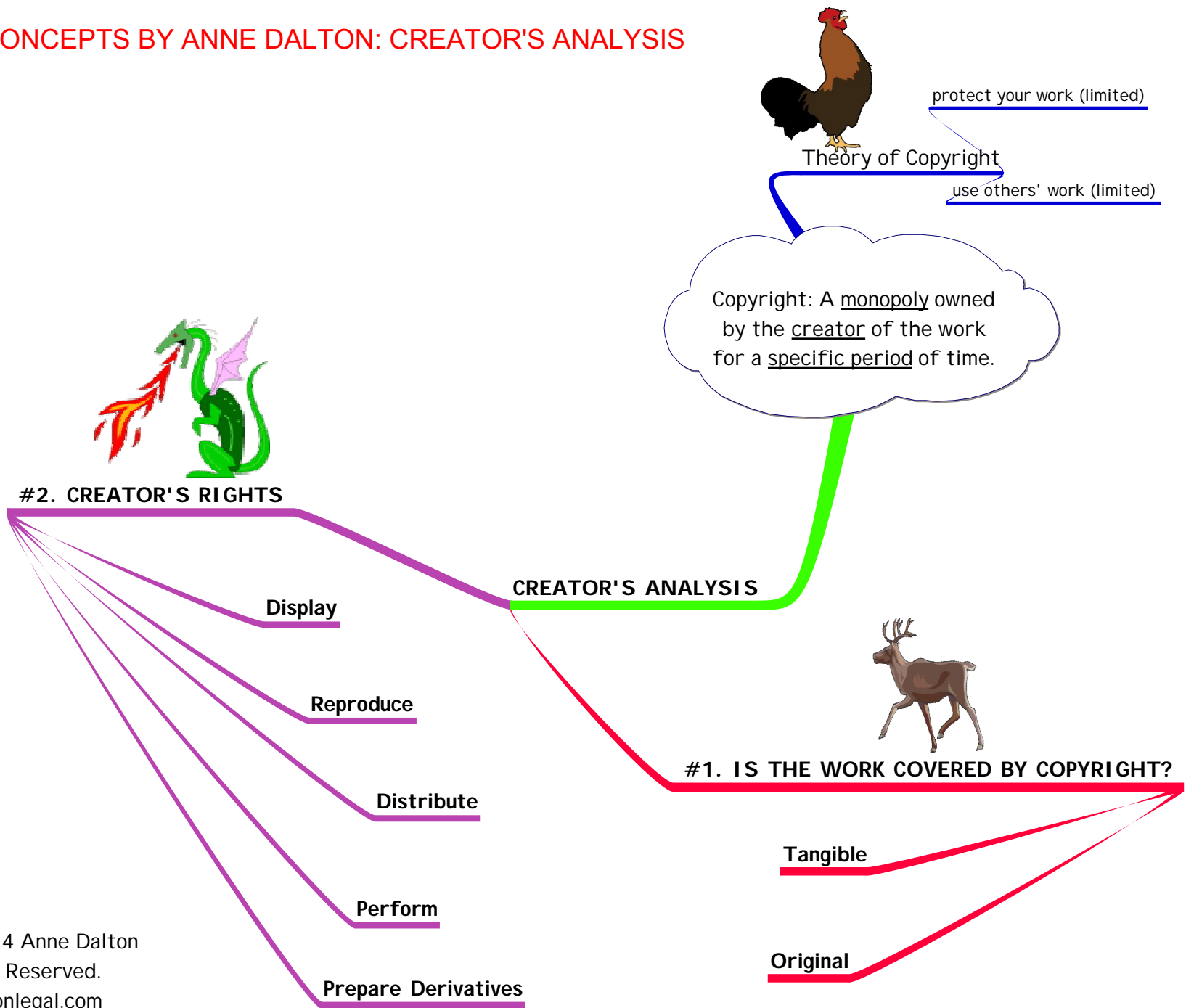
### **7. PERSONAL LIABILITY FOR STOLEN PASSWORDS & USER NAMES**

- Log off the database and close web browser when you are done

### **8. SECTION 110 (FACE TO FACE TEACHING EXEMPTION) APPLIES TO BOTH TEACHER AND STUDENT ACTIVITIES**

### **9. FACTS IN COPYRIGHTED WORK ARE OK TO USE**

# COPYRIGHT CONCEPTS BY ANNE DALTON: CREATOR'S ANALYSIS



## WHEN U.S. WORKS PASS INTO THE PUBLIC DOMAIN

By Lolly Gasaway

University of North Carolina

**Definition:** A public domain work is a creative work that is not protected by copyright and which may be freely used by everyone. The reasons that the work is not protected include: (1) the term of copyright for the work has expired; (2) the author failed to satisfy statutory formalities to perfect the copyright or (3) the work is a work of the U.S. Government.

DATE OF WORK	PROTECTED FROM	TERM
Created 1-1-78 or after	When work is fixed in tangible medium of expression	Life + 70 years <sup>1</sup> (or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation <sup>2</sup>
Published before 1923	In public domain	None
Published from 1923 - 63	When published with notice <sup>3</sup>	28 years + could be renewed for 47 years, now extended by 20 years for a total renewal of 67 years. If not so renewed, now in public domain
Published from 1964 - 77	When published with notice	28 years for first term; now automatic extension of 67 years for second term
Created before 1-1-78 but not published	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2002, whichever is greater
Created before 1-1-78 but published between then and 12-31-2002	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2047 whichever is greater

<sup>1</sup> Term of joint works is measured by life of the longest-lived author.

<sup>2</sup> Works for hire, anonymous and pseudonymous works also have this term. 17 U.S.C. § 302(c).

<sup>3</sup> Under the 1909 Act, works published without notice went into the public domain upon publication. Works published without notice between 1-1-78 and 3-1-89, effective date of the Berne Convention Implementation Act, retained copyright only if efforts to correct the accidental omission of notice was made within five years, such as by placing notice on unsold copies. 17 U.S.C. § 405. (Notes courtesy of Professor Tom Field, Franklin Pierce Law Center and Lolly Gasaway)

LOLLY GASAWAY Last updated 11-04-03

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# HAND-OUT “H-3”

## **FINDING THE COPYRIGHT EXPIRATION DATE**

- CHECK THE WORK
- GOOGLE THE AUTHOR’S OTHER AFFILIATIONS
- SEARCH COPYRIGHT OFFICE WEBSITE  
([WWW.COPYRIGHT.GOV/RECORDS](http://WWW.COPYRIGHT.GOV/RECORDS))
- CHECK THE LIBRARY OF CONGRESS ONLINE CATALOG ([WWW.CATALOG.LOC.GOV](http://WWW.CATALOG.LOC.GOV))
- CHECK COPYRIGHT CLEARANCE CENTER  
([WWW.COPYRIGHT.COM](http://WWW.COPYRIGHT.COM))

## ***Registering a Copyright with the U.S. Copyright Office***

An application for copyright registration contains three essential elements: a completed application form, a nonrefundable filing fee, and a nonreturnable deposit — that is, a copy or copies of the work being registered and “deposited” with the Copyright Office.

When the Copyright Office issues a registration certificate, it assigns as the effective date of registration the date it received all required elements in acceptable form, regardless of how long it took to process the application and mail the certificate of registration. The time needed to process applications varies depending on the amount of material the Office is receiving and the method of application.

You can apply to register your copyright in one of two ways.

### **Online Application**

Online registration through the electronic Copyright Office (eCO) is the preferred way to register basic claims for literary works; visual arts works; performing arts works, including motion pictures; sound recordings; and single serials. Advantages of online filing include:

- a lower filing fee
  - \$35 for a single author who is also the sole claimant in a single work that is not made for hire
  - \$55 for all other online filings
- the fastest processing time
- online status tracking
- secure payment by credit or debit card, electronic check, or Copyright Office deposit account
- the ability to upload certain categories of deposits directly into eCO as electronic files

**NOTE:** You can still register online and save money even if you submit a hard-copy deposit.

Basic claims include (1) a single work; (2) multiple unpublished works if the elements are assembled in an orderly form; the combined elements bear a single title identifying the collection as a whole; the copyright claimant in all the elements and in the collection as a whole is the same; and all the elements are by the same author or, if they are by different authors, at least one of the authors has contributed copyrightable authorship to each element; and (3) multiple published works if they are all first published together in the same publication on the same date and owned by the same claimant.



To access eCO, go to the Copyright Office website at [www.copyright.gov](http://www.copyright.gov) and click on *electronic Copyright Office*.

### **Paper Application**

You can also register your copyright using fill-in forms TX (literary works); VA (visual arts works); PA (performing arts works, including motion pictures); SR (sound recordings); and SE (single serials). To access these forms, go to the Copyright Office website and click on *Forms*. On your personal computer, complete the form for the type of work you are registering, print it out, and sign and mail it with a check or money order and your deposit. Blank forms can also be printed out and completed by hand or requested by postal mail (limit of two copies of each form by mail). The fee for a basic registration using one of these forms is \$85 payable by check or money order. The higher fee compared with online registration reflects the higher labor cost to process claims submitted on paper.

### **Applications That Must Be Completed on Paper**

Certain applications must be completed on paper and mailed to the Copyright Office with the appropriate fee and deposit. Forms for these applications include

- Form CA for correction or amplification of information in a registration
- Form D-VH for registration of vessel hull designs
- Form MW for registration of mask works
- Form GATT for registration of works in which the U.S. copyright was restored under the 1994 Uruguay Round Agreements Act
- Form RE for renewal of copyright claims, and
- Forms for group submissions.

To access these forms, go to the Copyright Office website and click on *Forms*. Complete the form for the type of work you are registering on your personal computer, print it out, and sign and mail it with a check or money order and your deposit. Blank forms can also be printed out and completed by hand or requested by postal mail (limit of two copies of each form by mail). Current registration fees for these types of applications are available on the Copyright Office website or by phone.

### **For Further Information**

#### ***By Internet***

Informational circulars, announcements, regulations, all application forms, and other materials are available from the Copyright Office website at [www.copyright.gov](http://www.copyright.gov).

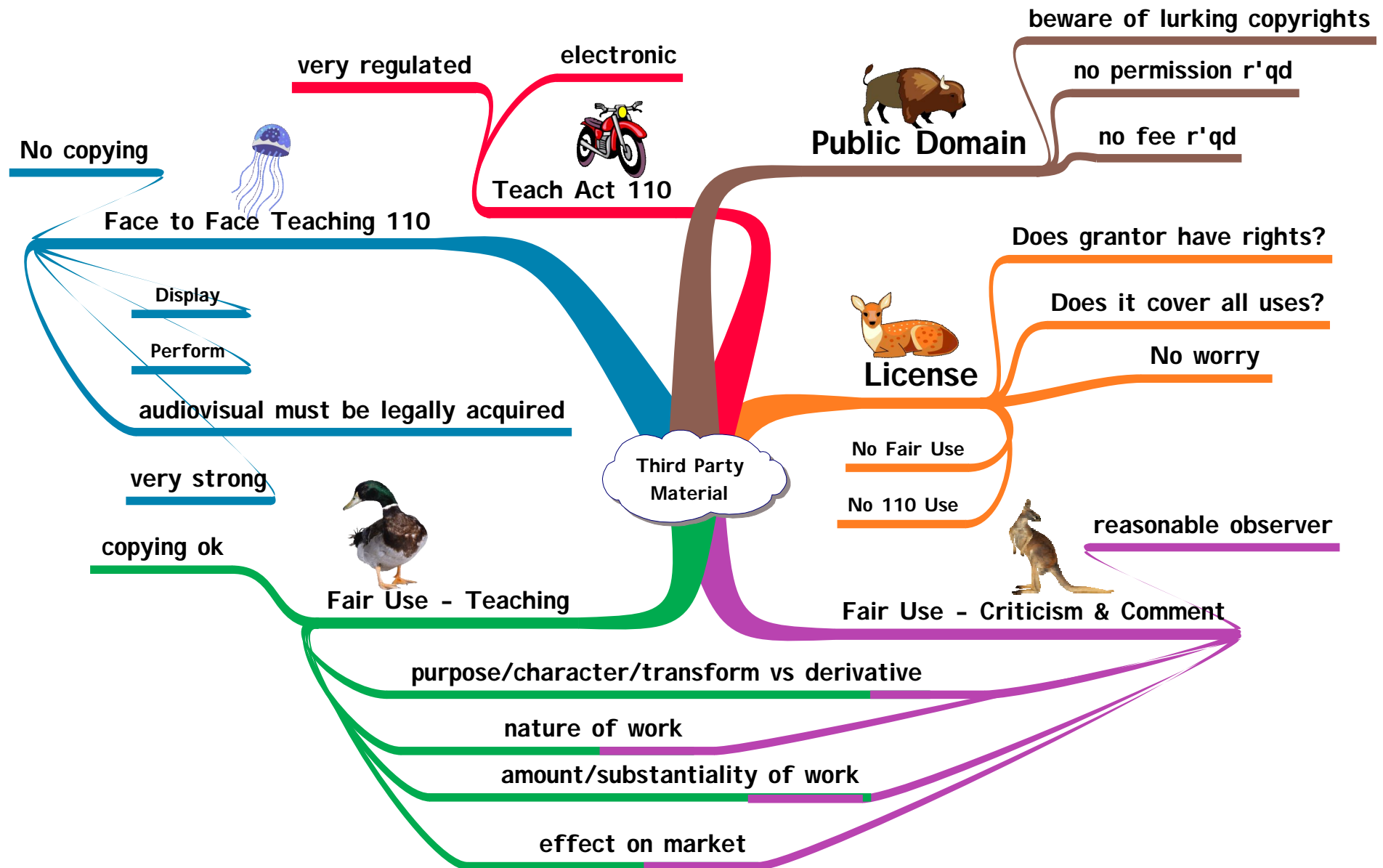
#### ***By Telephone***

For general information about copyright, call the Copyright Public Information Office at (202) 707-3000 or 1-877-476-0778 (toll free). Staff members are on duty from 8:30 AM to 5:00 PM, eastern time, Monday through Friday, except federal holidays. Recorded information is available 24 hours a day. To request paper application forms or circulars, call (202) 707-9100 and leave a message.

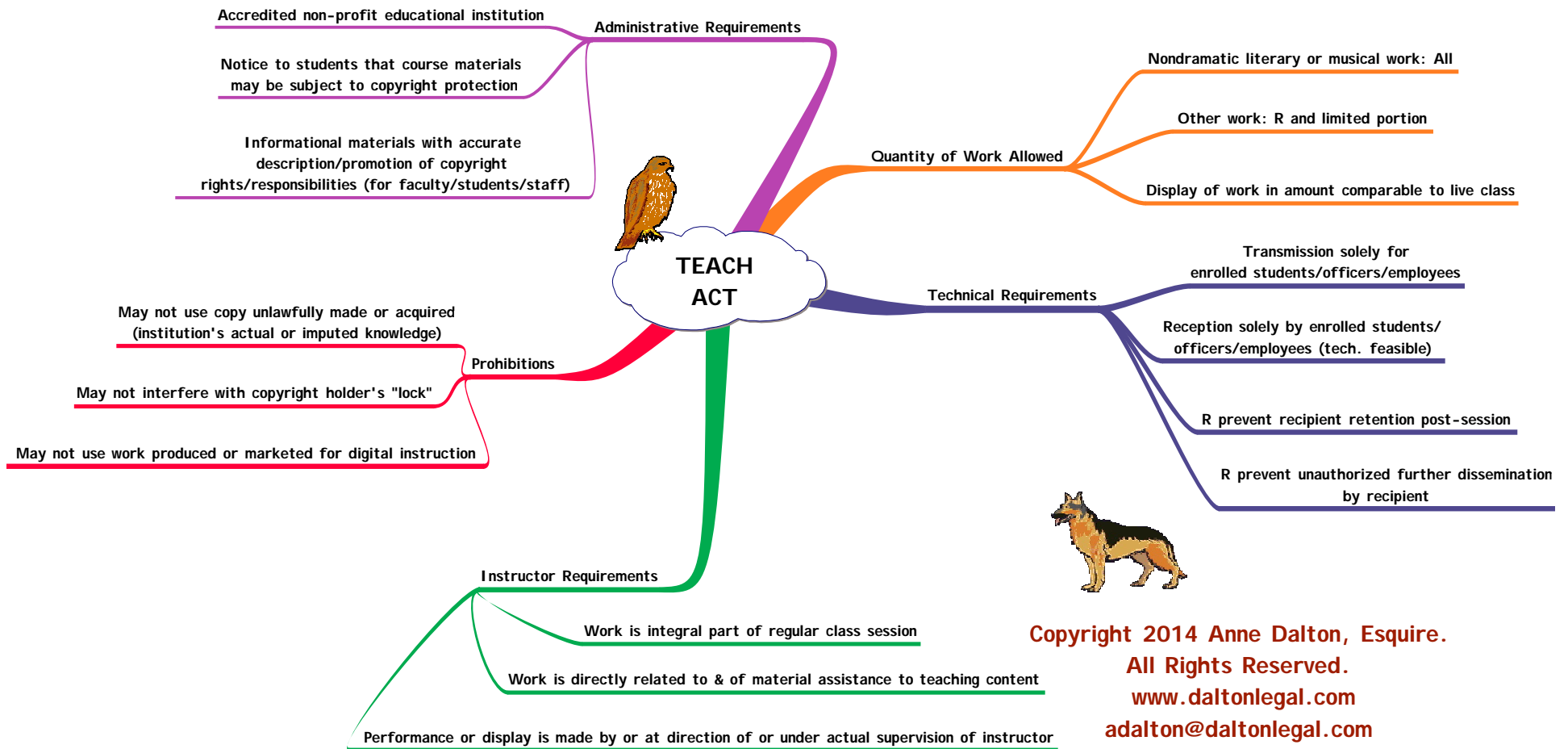
#### ***By Regular Mail***

Write to

*Library of Congress  
Copyright Office—PUB  
101 Independence Avenue, SE  
Washington, DC 20559*



# COPYRIGHT CONCEPTS BY ANNE DALTON: THE TEACH ACT



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[adalton@daltonlegal.com](mailto:adalton@daltonlegal.com)

## **Fair Use Fact Sheet FL-102, U.S. Copyright Office, Reviewed June 2012**

One of the rights accorded to the owner of copyright is the right to reproduce or to authorize others to reproduce the work in copies or phonorecords. This right is subject to certain limitations found in sections 107 through 118 of the copyright law ([title 17, U. S. Code](#)). One of the more important limitations is the doctrine of “fair use.” The doctrine of fair use has developed through a substantial number of court decisions over the years and has been codified in section 107 of the copyright law. Section 107 contains a list of the various purposes for which the reproduction of a particular work may be considered fair, such as criticism, comment, news reporting, teaching, scholarship, and research. Section 107 also sets out four factors to be considered in determining whether or not a particular use is fair.

1. The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes
2. The nature of the copyrighted work
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole
4. The effect of the use upon the potential market for, or value of, the copyrighted work

The distinction between what is fair use and what is infringement in a particular case will not always be clear or easily defined. There is no specific number of words, lines, or notes that may safely be taken without permission. Acknowledging the source of the copyrighted material does not substitute for obtaining permission.

The 1961 *Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law* cites examples of activities that courts have regarded as fair use: “quotation of excerpts in a review or criticism for purposes of illustration or comment; quotation of short passages in a scholarly or technical work, for illustration or clarification of the author’s observations; use in a parody of some of the content of the work parodied; summary of an address or article, with brief quotations, in a news report; reproduction by a library of a portion of a work to replace part of a damaged copy; reproduction by a teacher or student of a small part of a work to illustrate a lesson; reproduction of a work in legislative or judicial proceedings or reports; incidental and fortuitous reproduction, in a newsreel or broadcast, of a work located in the scene of an event being reported.”

Copyright protects the particular way authors have expressed themselves. It does not extend to any ideas, systems, or factual information conveyed in a work. The safest course is to get permission from the copyright owner before using copyrighted material. The Copyright Office cannot give this permission. When it is impracticable to obtain permission, you should consider avoiding the use of copyrighted material unless you are confident that the doctrine of fair use would apply to the situation. The Copyright Office can neither determine whether a particular use may be considered fair nor advise on possible copyright violations. If there is any doubt, it is advisable to consult an attorney.

<http://www.copyright.gov/circs/>

## Fair Use Checklist

Copyright Advisory Office  
Columbia University Libraries

Kenneth D. Crews, Director

<http://copyright.columbia.edu>

Name: \_\_\_\_\_

Institution: \_\_\_\_\_

Project: \_\_\_\_\_

Date: \_\_\_\_\_

Prepared by: \_\_\_\_\_

### Purpose

#### Favoring Fair Use

- ☐ Teaching (including multiple copies for classroom use)
- ☐ Research
- ☐ Scholarship
- ☐ Nonprofit educational institution
- ☐ Criticism
- ☐ Comment
- ☐ News reporting
- ☐ Transformative or productive use (changes the work for new utility)
- ☐ Restricted access (to students or other appropriate group)
- ☐ Parody

#### Opposing Fair Use

- ☐ Commercial activity
- ☐ Profiting from the use
- ☐ Entertainment
- ☐ Bad-faith behavior
- ☐ Denying credit to original author

### **Nature**

#### **Favoring Fair Use**

- ☐ Published work
- ☐ Factual or nonfiction based
- ☐ Important to favored educational objectives

#### **Opposing Fair Use**

- ☐ Unpublished work
- ☐ Highly creative work (art, music, novels, films, plays)
- ☐ Fiction

### **Amount**

#### **Favoring Fair Use**

- ☐ Small quantity
- ☐ Portion used is not central or significant to entire work
- ☐ Amount is appropriate for favored educational purpose

#### **Opposing Fair Use**

- ☐ Large portion or whole work used
- ☐ Portion used is central to or “heart of the work”

### **Effect**

#### **Favoring Fair Use**

- ☐ User owns lawfully purchased or acquired copy of original work
- ☐ One or few copies made
- ☐ No significant effect on the market or potential market for copyrighted work
- ☐ No similar product marketed by the copyright holder
- ☐ Lack of licensing mechanism

#### **Opposing Fair Use**

- ☐ Could replace sale of copyrighted work
- ☐ Significantly impairs market or potential market for copyrighted work or derivative
- ☐ Reasonably available licensing mechanism for use of the copyrighted work
- ☐ Affordable permission available for using work
- ☐ Numerous copies made
- ☐ You made it accessible on the Web or in other public forum
- ☐ Repeated or long-term use