Objective

• Become familiar with Federal Law concepts that apply to Intellectual Property

• Understand Institutional Rules & Regulations pertaining to Online Content/Intellectual Property
Two basic questions to answer:

• Who owns my intellectual property?
• How can I legally use the intellectual property of others?
Roadmap

• I. Federal Law
  - A. Copyright (who owns my work?)
  - B. Teach Act (how can I use other’s work?)

II. State Guidance

III. Institutional Directives
  A. Regents’ Rules Chapter 10
  B. OP 56.02
Intellectual Property

- Principle rights governing ownership & disposition of an individual’s creativity
- Short hand term to denote legal rights in products of the mind

10.02.6 “Intellectual Property.” Collectively, all forms of patented and unpatented inventions, tangible research property, copyrightable works, copyrights, trademarks, and trade secrets. The term also includes copyrightable or copyrighted works which are TTU system administration or component institution manuals, materials or other works, such as software, which may be a part of or embedded in a larger comprehensive design, system or device.
Copyright

- Federally created property rights enacted to encourage and reward creativity and to promote dissemination of information deemed useful to the public
- Transferable right
Copyright ownership approaches

- **Academic Tradition**: Faculty member who develops material owns said material except when “substantial” institutional resources were used.

- **Work Made for Hire**: Works made in scope of employment belong to the institution.

- **Hybrid Ownership**
Work made for hire

- Major exception to the rule that the author owns the copyright
- At common law there was a “textbook exception” to work made for hire; this was dropped in the 1976 codification.
- Works are deemed “for hire” if:
  - Faculty member in normal course & scope of employment creates copyrightable work; or,
  - Independent contractor and institution expressly agree
  - Under work made for hire doctrine, employer becomes the “author” and therefore copyright holder

Test for “scope:” whether employer had the right (exercised or not) to supervise & control
10.02.17 “Work for Hire.” A work specially ordered or commissioned by TTUS for use as an institutional document or a contribution to a collective work, including as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas. The term also includes software, computer programs or written instructions, protocols or training aids created by TTUS employees as a regular part of their duties. For faculty, works for hire are works derived from defined tasks that fall outside the normal teaching and research mission of the university. Work that occurs within the normal scope of academic employment in the teaching and research mission of the university may be “work for hire” when accomplished pursuant to written directive and agreement.
Use of other’s IP

- Public Domain
- Use of copyrighted material with permission (institutional system in place for requesting & obtaining permission)
- Fair use
- Library reserve system
- TEACH Act
Fair Use- Four Factor Test

• the purpose and character of your use
• the nature of the copyrighted work
• the amount and substantiality of the portion taken, and
• the effect of the use upon the potential market.
TEACH Act

• Under Copyright law there are few constraints on what may be used in-classroom. Once content goes online, it’s a different story.

• As distance learning grew, in 1998 Congress conducted a study which resulted in the 2002 TEACH Act.

• Not a panacea
Ready to use the TEACH Act? Use this handy checklist to see

- My institution is a nonprofit accredited educational institution or a government agency
- It has a policy on the use of copyrighted materials
- It provides accurate information to faculty, students and staff about copyright
- Its systems will not interfere with technological controls within the materials I want to use
- The materials I want to use are specifically for students in my class
- Only those students will have access to the materials
- The materials will be provided at my direction during the relevant lesson
- The materials are directly related and of material assistance to my teaching content
- My class is part of the regular offerings of my institution
- I will include a notice that the materials are protected by copyright
- I will use technology that reasonably limits the students’ ability to retain or further distribute the materials
- I will make the materials available to the students only for a period of time that is relevant to the context of the class session
- I will store the materials on a secure server and transmit them only as permitted by this law
- I will not make copies other than the one I need to make the transmission
- The materials are of the proper type and amount the law authorizes
  - Entire performances of nondramatic literary and musical works
  - Reasonable and limited parts of a dramatic literary, musical, or audiovisual work
  - Displays of other works, such as images, in amounts similar to typical displays in face-to-face teaching
- The materials are not among those the law specifically excludes from its coverage:
  - Materials specifically marketed for classroom use for digital distance education
  - Copies I know or should know are illegal
  - Textbooks, coursepacks, electronic reserves and similar materials typically purchased individually by the students for independent review outside the classroom or class session
- If I am using an analog original, I checked before digitizing it to be sure:
  - I copied only the amount that I am authorized to transmit
  - There is no digital copy of the work available except with technological protections that prevent my using it for the class in the way the statute authorizes

Copyright Crash Course, CC-BY, http://doi.org/10.15781/T24J09X6J
• 10.02.5 “Distance Learning.” Instruction in which the majority of the instruction occurs when the student and instructor are not in the same physical setting. A course is considered a distance education course if students receive more than one-half of the instruction at a different location than the instructor. Distance education can be delivered synchronously or asynchronously to any single or multiple location(s) through electronic correspondence or other means.
10.03.3 Ownership of Copyrightable Works. TTUS encourages the preparation and
publication of copyrightable works that result from teaching, research, and scholarly and
artistic endeavors by TTUS faculty, staff and students. TTUS recognizes faculty, staff, and
students’ freedom with respect to their copyrightable works, consistent with their obligations
to TTUS. Copyrightable works may be created under a variety of circumstances that
impact the ownership and subsequent management thereof, as follows:

a. Books, Articles and Similar Works. In keeping with academic tradition, and except to the
extent required by the terms of any valid funding or work for hire agreement, TTUS does not
claim ownership to pedagogical, scholarly or artistic works, regardless of their form of
expression. Such works include but are not limited to: (i) faculty-prepared works such as
syllabi, textbooks, course materials, course lectures and refereed literature; and (ii) works of
students created in the course of their education, such as dissertations, papers and journal
articles. However, all faculty-prepared pedagogical, scholarly or artistic works are subject
to, and TTUS does hereby retain, a nonexclusive right to utilize such works for student
instructional purposes. TTUS claims no ownership in popular nonfiction, novels, poems,
musical compositions or other works of artistic imagination that are not works for hire. If title
to copyright in works defined within this section vests in TTUS by law, TTUS will, upon request
and to the extent allowed by law, convey copyright to the creators of such copyrightable
works.
b. Further, nothing in this section is intended to change the traditional manner in which TTUS faculty, staff and students assign the copyright ownership of works intended for publication in scholarly journals.

c. TTUS reserves the right to record faculty lectures and to allow students registered for the class for which the lecture was given to view recorded lectures that may be posted online.

d. Works for Hire. Except as provided in Section 10.03.3.a, TTUS shall retain ownership of all copyrightable works for hire.

e. Works Developed with Use of TTUS Resources:

(1) Except as provided in Section 10.03.3.a, copyrightable works that are not works for hire but are works that are developed with use of TTUS resources are owned by TTUS and must be disclosed to the ORC. In the case of a disagreement as to whether a work fits into this section, the provost (the chief academic officer) of the component institution shall make a determination.

(2) Copyrightable works that are not works for hire but are works that are developed under a sponsored research agreement or other funding arrangement, shall be determined in accordance with the terms of the sponsored research agreement or other agreement, or, in the absence of such terms and to the extent consistent with copyright law, are owned by TTUS.

f. Distance learning course content generally will be treated as traditional course content. However, such content and materials may be “work for hire” if developed under a work for hire arrangement. With respect to all distance learning course content, whether work for hire or not, TTUS automatically retains a payment-free license for use of all or part of such content for use in its ongoing teaching and research mission. In the case of distance learning course content which is work for hire, such license shall be exclusive unless otherwise agreed in writing.
Questions?
Sources


3. https://guides.lib.utexas.edu/copyright/teachact