Prescript

- I requested and received **absolutely no permissions** for use of images in this presentation.
- See 17 U.S.C. Section 110 (1)
- As a result, many are fuzzy thumbnails
- And this talk is not going up on the web with images
- Which is part of the copyright problem
Let’s Start With Some Common Misconceptions

- A work is not copyrighted unless it is “officially registered”
- It is fair use to copy it because the copyright owner didn’t respond to my email/letter/phone call, or, “silence equals permission”
- The appearance of a work on the web means the owner has consented to reuse or republication
- If I’m not “selling” it, I don’t have a problem
- If I’m “just” reposting it, there’s no problem
And More Misconceptions

- When I load it onto my computer, I’m not making a copy
- I’m not “publishing” anything when I put stuff up on the web
- Fair use protects my right to do what I want with anything that has already been posted on the web.
- If the publisher is too much of an idiot to sell a digital copy, I can make one for myself
Copyright Protection

- Is now instantaneous from the moment a copyrightable work is “fixed in a tangible medium of expression.”
- No registration is needed
- No marking (“e.g., Copyright 2013”) is needed
- If you can see it or read it, or hear it from a recorded medium, it’s copyrighted!
Copyright Protection

- Literary Works (including articles, books, software with written documentation)
- Musical Works (including score and lyrics)
- Dramatic Works (including any accompanying music)
- Choreography and Pantomimes
- Pictorial, Graphic and Sculptural Works
- Motion Pictures and other Audiovisual Works
- Sound Recordings
- Architectural Works (including plans and drawings)
Exclusive Rights of the Copyright Holder
17 U.S.C. Section 106:

- Reproduce the copyrighted work whether in whole or in part (making a digital copy from an analog work is “reproduction” restricted to the copyright holder)
- Prepare derivative works including translations or adaptations
- Distribute copies by sale or other transfer of ownership
- For works capable of performance, to perform the copyrighted work in a public place or setting
- For works capable of display, to display the copyrighted work in a public place or setting
A lot depends on § 107 Fair Use

“Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include”
The Fair Use Standards:

- Purpose and character of the use including whether the use is for educational vs. commercial purposes
- The nature of the copyrighted work – is it a factual or creative work
- The amount and substantiality of the portion to be used in relation to the work as a whole
- The effect or impact of the use upon the potential market for or value of the work.
Fair Use (or other Copyright exceptions):

- Generally enable expansive delivery/sharing of images, sound, video clips, within a classroom learning environment.
- Generally justify use of images, sound, video clips for scholarly and artistic works shared within the class or university environment.
- Offer less support for purely “decorative” copying.
- DIMINISH WHEN YOU LEAVE THE ACADEMY AND HIT THE WEB OR THE WORLD.
- Out “there” fair use critically depends on transformative uses.
Lyrics, Score, Sound Recordings, MUSIC on Campus

- Most campus performance uses are covered by ASCAP or BMI licenses.
- These licenses only allow distribution of performances on a university owned and operated TV or radio station or server, NOT, for example, iTunesU, YouTube, Facebook, etc.
- Web streaming requires a new license...
When We Leap From the Classroom and the University to the Web...

- We lose many Copyright protections
- Other provisions of the Copyright Act come into play (such as those added by the DMCA)
- The Fair Use case can lesson
- The likelihood of discovery is significant; the stakes are higher
- It is often necessary to get permission if you want your work to be permanent.
Dear Sir or Madam:

It has come to our attention that several images represented by Getty Images were used on your website. However, we do not have a matching record of license for this use. The images in question are attached for your reference along with screenshot example of how they appear on the site. The can be seen on:

http://www.virginia.edu/summer/sea_screen.html
http://www.virginia.edu/eastasia/

As the leading worldwide provider of digital media, Getty Images is deeply committed to protecting the interests, intellectual property rights and livelihood of the photographers, filmmakers and other artists who entrust Getty Images to license their work. If proof of license cannot be provided, we will need to settle any unlicensed image use up to date to ensure our photographers are compensated.

If a third-party was contracted to design and develop your company’s website, Getty Images recommends that your company contact the third-party to see if any licenses from Getty Images surrounding the specific use of the images in question exist. Please provide an invoice number or sales order number and Getty Images will research as appropriate.

Please let me know what information you have or if there is a more appropriate person I can speak with to settle this matter. Getty Images looks forward to amicably resolving this matter and appreciates your cooperation throughout this process. Thanks in advance for your assistance.
THE SEA ON SCREEN

The Sea on Screen: Addressing the Science of the Ocean in the Media

**EVSC 4559 - SECTION 2**
3 credits

More than half the population of the United States lives within fifty miles of the ocean; few will ever experience the sea from beneath its surface or beyond the sight of land. Much of what people know, or think they know, about the ocean is what they have seen on television and film screens. This class will explore portrayals of the sea as alternately mysterious and familiar, bountiful and endangered, vengeful and beneficent, in both fiction and documentary genres. We will critically examine how these portrayals compare with scientific knowledge and the history of ocean exploration. From Jaws and Shark Week to Whale Wars, and Jacques Cousteau to Steve Zissou, our connection to the single most dominant feature of our planet is shaped by media. What are we learning and how does it matter?

**COURSE DATES:**
TBA

**TIMES**
10:00AM to 12:00PM
East Asia Center at University of Virginia

The East Asia Center was founded in 1975 to provide a forum for faculty and students interested in East and Southeast Asia. The Center is designated a National Resource Center by the U.S. Department of Education. We sponsor a speaker series and travel grants, and hold conferences and activities and events related to Asia. The Center is an interdisciplinary organization of 25 faculty, each of whom is a full member of a department. Asia-related courses are taught as part of the various departmental curricula.

Course Offerings

New Courses Available for Spring 2013!

- ANTH 3590: Taiwan: History, Society, and Religion
- KOR 1559: Accelerated Elementary Korean

Upcoming Events and Lectures

"Mo Yan's Nobel Prize: Resetting Chinese Literature"

Charles A. Laughlin, Weedon Professor of East Asian Studies, Professor of Chinese Literature, UVA

ANNOUNCEMENT: The application for the FLAS (Foreign Language and Area Studies Fellowship) Awards is now available on our Grants Awards page. Applications due March 1 at 2 PM.
Thanks for your call this morning. Please see the below cost to reconcile the identified image use up to date. The amount that we are seeking in this case is based on the list rates that Getty Images charges our customers for the same use as has been identified in this case. Included within our calculation is both the actual cost of licensing for the uses in question and also our costs of enforcement.

Web, secondary page, low res, 1-3 months: $592.50

Payment of this amount will serve as full and final settlement of our copyright claim regarding the identified past unauthorized use of the images at issue. Payment may be made either via credit card or against invoice with net 30 terms. The terms of this settlement offer shall be kept confidential, except as may be required by law. Getty Images expressly reserves all rights and remedies available under copyright law. Thank you again for your time and attention to this matter.
A few other issues to think about
Art and Multiple Interests

- *Images* of fine art involve separate rights issues involving the artist, the object owner, and the photographer.
- The artist’s sale of a work of art does not transfer the copyright absent express written agreement.
- Artists have strong rights to the integrity of their works (VARA).
- The art owner has rights to the physical object; museums often assert a right to restrict reproductions as a matter of contract or license under the mantle of “copyright.”
- The photographer has an independent copyright interest as long as the image involves creativity. (Rote images of 2-D works don’t count; images of 3-D works (sculpture), people, places) do.
And then there are contractual issues apart from copyright

- Images may be up on the web and seemingly “free” but you have to read the license, EULA, Terms of Use, “Copyright Policy”, whatever.
- Click through licenses are legally enforceable…
- Contracts can trump fair use in copyright
- Third party sites you are posting/harvesting content from and to have their own independent rules. (YouTube, Wikipedia, twitter, publishers, other universities, etc.)
- **BMI/ASCAP will require permission if you want to register your work with them as an artist for licensing purposes. (musician + poet)**
In Nashville, the home of the American music industry, 500 counts were filed against 800 hi-hop, rap, & other “sampling” defendants alleging copyright infringement under federal law.

These cases were severed into 476 separate actions by the federal district court.

In one of the cases arising out of that mess, the 6th Circuit found that duplicating even a single note from a sound recording infringes Section 114 and was initially unwilling to consider whether fair use afforded a defense. See Bridgeport Music v Dimension films, 410 F.3d 792 (6th Cir 2005).

Recording industry has been vigilant about policing and has vigorously employed tactics under the DMCA.
So how much is “fair”?

- Film and music industries are the most litigious copyright enforcers today.
- In finding against CBS, which prepared a retrospective about the life of Charlie Chaplin using film excerpts without permission, a court upheld a jury finding against fair use where “CBS used copyrighted material from five different works: 105 seconds of an 89 minute film; 225 seconds of a 60 minute film; 85 seconds of a 72 minute film; 55 seconds and 75 seconds of an 89 minute film; and 75 seconds of a 72 minute film. Roy Export Co. Establishment etc. v Columbia Broadcasting System Inc., 503 F Supp 1137, 1145 [SD NY 1980]
**Fair use.** The makers of a movie biography of Muhammad Ali used 41 seconds from a boxing match film in their biography. **Important factors:** A small portion of film was taken and the purpose was informational. (*Monster Communications, Inc. v. Turner Broadcasting Sys. Inc.*, 935 F. Supp. 490 (S.D. N.Y. 1996).)

**Not a fair use.** A television station's news broadcast used 30 seconds from a four minute copyrighted videotape of the 1992 Los Angeles beating of Reginald Denny. **Important factors:** The use was commercial, took the heart of the work and affected the copyright owner's ability to market the video. (*Los Angeles News Service v. KCAL-TV Channel 9*, 108 F.3d 1119 (9th Cir. 1997).)
**Not a fair use.** A nonprofit foundation presented a program called Classic Arts Showcase, for broadcast principally to public television and cable channels. The foundation used an 85 second portion (of a five-minute performance) by an opera singer from a two-hour movie, "Carnegie Hall." **Important factors:** Although the court considered the use to be educational, noncommercial and to consist of an extremely small portion of the work, those factors were outweighed by the potential loss of licensing revenue. The copyright owners had previously licensed portions of the work for broadcast and the court determined that the foundation’s use affected the potential market. *(Video-Cinema Films, Inc. v. Lloyd E. Rigler-Lawrence E. Deutsch Found., 2005 U.S. Dist. LEXIS 26302 (S.D. N.Y. 2005)).*
Excerpts from YouTube’s “Copyright Tips: A few guiding principles”

- It doesn't matter how long or short the clip is, or exactly how it got to YouTube. If you taped it off cable, videotaped your TV screen, or downloaded it from some other website, you still need the copyright owner's permission to distribute."

- It doesn't matter whether or not you give credit to the owner/author/songwriter -- it may still be copyright infringement."

- It doesn't matter that you are not selling the video for money -- it may still be copyright infringement.

- It doesn't matter if you created a video made of short clips of copyrighted content even though you edited it together, it may still be copyright infringement.
Getting permission

- Synchronization rights (combining music & sound) - need to get rights from artist or artist’s recording company.
- Some companies will not allow synch licenses to extend to internet delivery.
- Some companies require song interruptions; limit time frame for rights; limit countries where work can be performed or distributed.
- Start with BMI/ASCAP/SESAC to find artist and contact information.
- *Negotiate*
Mechanical rights

- A mechanical license grants the rights to reproduce and distribute copyrighted musical compositions (songs) on CDs, records, tapes, ringtones, permanent digital downloads, interactive streams and other digital configurations supporting various business models, including locker-based music services and bundled music offerings. If you want to record and distribute a song that you don’t own or control, or if your business requires the distribution of music that was written by others, you need to obtain a mechanical license.

- A mechanical license doesn’t include the use of a song in a video. That use requires a synchronization license which you will need to obtain by contacting the publisher(s) directly.
Music Tips

- Start the process far in advance to allow for time spent locating the rights owners, negotiating, and completing the video.
- Have several song options in mind in case the terms or cost presented by the first-choice track make the project a deal-breaker. Be flexible as far as interruptions in the track, which may be a required term.
- Consider music that is available via, a Creative Commons license.
- Make the music yourself - relationships with students and faculty or local musicians who can help you develop music specifically for your purposes.
ASCAP: http://www.ascap.com/
BMI: http://www.bmi.com/
SESAC: http://www.sesac.com/
SoundExchange: http://www.soundexchange.com/

Codes of Best Practices/Center for Social Media

Films/video: You have to find and negotiate with individual companies/studios
Bottom Lines

- The more truly transformative (artistic, creative) the use, the better is the chance that courts will allow unpermitted uses.
- A use could be legally fair, but someone you need may ignore this right. (Publisher, website, music or film distributor, etc.)
- If your work is transitory and you don’t mind its destruction or lack of accessibility, you have more leeway.
- The more permanence and usability you seek, the more permissions you’ll need.
- If you want to sell it, fair use scale can tip.
Questions and Answers
Hiding in Plain Sight?