Owing & Using research

Kevin L. Smith, Duke University Libraries
Copyright law is technology neutral
  Except when it is not
The speed of change
  Role of fair use
The speed of distribution
  Less forgiving
The scale
  Risk analysis
The fear factor

What difference does digital make?
Two Issues

- Owning online work
- Using other people’s stuff in your own teaching
Default rule is automatic copyright to author.

Who is an author?

Work made for hire says employer is author.

Joint authorship now ubiquitous

Equal share in rights

Need for prior agreements

If you don’t like these rules, change ‘em!

And beware of agreements that change them, or carve out licenses

Who owns academic work?
A transfer of copyright must be in writing
  Most publication agreements w/ trad. Journals
A license is permission to exercise a right
  Licensor retains the right
  May be exclusive or non-exclusive
  Very flexible

Transfers and licenses
Three authors write an article together, and one decides to submit it for publication before the others think it is ready. Can they prevent this?

A Duke professor moves to Another U. May she offer an online course developed at Duke as an Another U class?

Another researcher has extracted data you collected from tables published with your article and has published a different set of conclusions based on that data. Is this OK?
Five questions

Is there a copyright?

Does a license address my proposed use?

Does a specific exception apply?

Is it fair use?

Who can I ask for permission?

Using content by others
What is in the public domain?

- Ideas!!!
- Facts, titles, short phrases
- Works published before 1923
- Works of the U.S. government
- Works published between 1923 & 1989 without © notice
- Works published btw 1923 & 1963 for which © was not renewed.
In the research environment,

Fair use is the major exception
Especially for new technologies, fair use is vital

Four factors

Transformativeness

Will this content help me make my new point?

Will it help my reader/viewer get the point?

Have I used no more than needed to make the point?

Transformative fair use
Soundtracks & film clips

- Ask if you need *this specific* song or footage.
  - How much is needed?
- If the song is just a “soundtrack” rather than part of the argument,
  - Consider a Creative Commons licensed alternative.
- If the need is for stock footage,
  - Consider a Creative Commons licensed alternative
  - Shoot it yourself
  - Purchase from a stock collection
Two different uses

- Materials incorporated into lectures slides or videos
  - Commentary & criticism → fair use
  - Assess transformation; assert when most clear
    - Transformative analysis really about good teaching and scholarship
- Materials distributed to participants
  - Open access materials or permission

MOOCs
Traditional publication (subscription journal)

Open access journal
  - Usually peer-reviewed
  - May have article processing fees or not.

Self-archiving
  - Traditional publication plus
  - Copy (earlier version?) in open repository
  - Creative Commons license

Distributing your work