

---

▶ **The Center for  
Intellectual Property  
Handbook**

---

Edited by  
Kimberly M. Bonner and the staff of  
The Center for Intellectual Property

Neal-Schuman Publishers, Inc.  
New York London

Published by Neal-Schuman Publishers, Inc.  
100 William St., Suite 2004  
New York, NY 10038

Copyright © 2006 University of Maryland University College

Cover Image by Andy Joyce © University of Maryland University College

All rights reserved. Reproduction of this book, in whole or in part, without written permission of the publisher, is prohibited.

Printed and bound in the United States of America.

The paper used in this publication meets the minimum requirements of American National Standard for Information Sciences—Permanence of Paper for Printed Library Materials, ANSI Z39.48-1992.

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

The Center for Intellectual Property handbook / edited by Kimberly M. Bonner and the staff of the Center for Intellectual Property.

p. cm.

Includes bibliographical references and index.

ISBN 1-55570-561-8 (alk. paper)

1. Copyright—United States. 2. Fair use (Copyright)—United States.

I. Bonner, Kimberly M. II. Center for Intellectual Property in the Digital Environment.

KF2994.C45 2006

346.7304'82—dc22

2006012456

---

## ► Dedications

I dedicate this book to my children, Cameron and Preston, who provide me with an endless supply of ideas and new ways of seeing the world.

K.B. Kelley

To my parents, Amos and Bessie Bonner, and my grandparents, Robert and Irma Allen. You were model educators who taught me the importance of access to a quality education and educational resources. Thanks for teaching me that with knowledge all things are possible.

K.M. Bonner

---



---

# ▶ Contents

---

List of Figures	vii
Preface	ix
Acknowledgments	xiii
1 Copyright Basics	1
<i>Kimberly B. Kelley and Kimberly M. Bonner</i>	
2 Instructional Materials and “Works Made for Hire” at Universities: Policies and Strategic Management of Copyright Ownership	15
<i>Kenneth D. Crews</i>	
3 Fair Use and Licensing	39
<i>Peggy E. Hoon and Cheryl L. Davis</i>	
4 Electronic Reserves and Copyright: A Collision Course?	55
<i>Laura N. Gasaway</i>	
5 The TEACH Act: Will It Make a Difference for Colleges and Universities?	71
<i>Kimberly M. Bonner</i>	
6 The Digital Millennium Copyright Act and the University Campus: A Safe Harbor?	87
<i>Arnold P. Lutzker</i>	
7 Digital Rights Management (DRM) and Higher Education: Opportunities and Challenges	107
<i>Kimberly B. Kelley, Kimberly M. Bonner, Clifford A. Lynch, and Jaehong Park</i>	
8 Copyright Education Programs	123
<i>Olga François</i>	
9 Copyright Law, Intellectual Property Policy, and Academic Culture	153
<i>Clifford A. Lynch</i>	
Appendices	175
Chapter 1: Appendix A	177
Chapter 2: Appendix B	181
Chapter 3: Appendix C	191
Chapter 4: Appendix D	199
Chapter 6: Appendix E	205
Chapter 8: Appendix F	227
Index	243
About the Center for Intellectual Property	252
About the Authors	253



---

## ► List of Figures

---

Figure 1.1: Chart of Works and the Public Domain	6
Figure 7.1: Top Four DCC Technologies	112
Figure 7.2: DCCS Goals	114
Figure 8.1: ACRL Information Literacy Standard Five with Highlighted Copyright Related Outcomes	126
Figure 8.2: Common Copyright Guidelines	134
Figure 8.3: Copyright and Learning Standards	136
Figure 8.4: Copyright Education	137
Figure 8.5: Sample Classroom Assignments	144
Figure 8.6: Resources for Copyright Quizzes, Questions, and Assessments	147



---

## ► Preface

---

Meeting the various challenges posed by digital distribution of legally protected materials has become a pressing issue in all arenas of academic life. The Center for Intellectual Property (CIP), an organization at University of Maryland University College (UMUC), is dedicated to easing these difficulties by providing information and other services about copyright issues to professionals at higher education institutions. The organization's staff has created *The Center for Intellectual Property Handbook* to offer a helpful and timely overview of current legal issues and propose potential solutions.

Why is there an increased need for information and education about these issues, particularly for those in academic fields? As more institutions offer a greater number of educational programs, classes, materials, or content online, the possibility of copyright infringement increases exponentially, as does the potential scope of its legal ramifications, including lawsuits and expensive out-of-court settlements. Confusion about what content can be utilized in online instruction has amplified greatly over the past decade. Mastering extremely complicated new legislation, such as the Digital Millennium Copyright Act (DMCA) and the Technology Education and Copyright Harmonization (TEACH) Act, presents daunting challenges. Understanding the conditions that must be met to comply with these congressional measures is often difficult for the layperson. Further, fair use, always a muddy concept, is all the more confusing when applied to digital works.

### PURPOSE AND AUDIENCE

The goal of the *The Center for Intellectual Property Handbook* is to provide an insightful, accessible, and practical introduction to issues of copyright for a broad spectrum of individuals in the higher education community. Its potential readership within academe includes those engaged in every sphere of higher education, including:

- university presidents and provosts;
- college and university counsel;
- faculty and librarians;
- directors and managers of e-learning;
- corporate learning and education managers;
- knowledge management and information technology professionals;
- Web-based training specialists;
- instructional design managers;
- legal counsel;

- ▶ deans and directors of college and university academic and professional programs;
- ▶ students taking courses on legal issues.

It may even interest information consumers in the general public who are concerned about the effects of copyright on their day-to-day actions.

Individual chapter authors represent many different professional fields, including law, education, information technology, and librarianship. All tackle their particular subjects with the objective of presenting practical solutions that will lead readers toward the clear path of copyright compliance. They have drawn from the reservoir of CIP research as well as from the rich streams of other knowledge in the landscape of intellectual property issues. These contributing authors have been carefully selected for their individual expertise in particular facets of the complex, ever changing terrain that is copyright in the twenty-first century.

## CHAPTER ORGANIZATION AND HOW TO USE THIS BOOK

In Chapter 1, “Copyright Basics,” Kimberly B. Kelley and Kimberly M. Bonner introduce basic concepts, laws, and definitions relating to copyright and explain key ways they impact information exchange in higher education.

In Chapter 2, “Instructional Materials and ‘Works Made for Hire’ at Universities: Policies and Strategic Management of Copyright Ownership,” Kenneth D. Crews examines the legal principles and institutional policies surrounding ownership of course materials. Summarizing current developments in this area in light of judicial decisions, Crews encourages educational institutions to reevaluate their copyright policies. He then discusses the options facing faculty and university administrators in allocating copyright ownership and offers helpful alternatives for avoiding ambiguity in these transactions.

In Chapter 3, “Fair Use and Licensing,” Peggy E. Hoon and Cheryl L. Davis review the “fair use” doctrine—its purpose and the processes behind its use—and discuss recent judicial decisions and trends affecting this important concept. Their treatment of the topic focuses on the challenges to fair use posed by licensing educational materials in the digital environment, specifically in online instruction, and Web-enhanced education.

In Chapter 4, “Electronic Reserves,” Laura N. Gasaway covers the history, purpose, and legal basis for e-reserves and how they have developed from traditional reserve collections. She also evaluates various existing attempts to guide faculty and library staff in the establishment and use of e-reserves.

In Chapter 5, “The TEACH Act: Will It Make a Difference for Colleges and Universities?” Kimberly M. Bonner reviews and analyzes the recently passed amendment to the Copyright Act, the Technology, Education, and Copyright Harmonization (TEACH) Act. Bonner examines key provisions of the act, sums up implications

for universities, and looks at preliminary information from universities on whether or not the TEACH Act is being used as well as the underlying rationale for such use or nonuse.

In Chapter 6, “The Digital Millennium Copyright Act (DMCA) and the University Campus: A Safe Harbor?” Arnold P. Lutzker discusses the act and reviews the history of DMCA. In the process, he describes how this legislation, originally written to protect online service providers (OSPs) from liability resulting from the acts of their users, affects the university environment. Among other areas of immediate concern, Lutzker gives specific attention to the area of peer-to-peer file sharing.

Chapter 7, “Digital Rights Management (DRM) in Higher Education: Opportunities and Challenges” explains digital rights management (DRM) systems and discusses the results of a study about their implementation within the higher education community. The Center for Intellectual Property researchers—Kimberly B. Kelley, Kimberly M. Bonner, Clifford A. Lynch, and Jaehong Park—share the results of their investigation. Among other conclusions, they point to important findings about the types of DRM systems being employed by universities; whether and how institutions are using these technologies to control uses of and access to digital information; the level and extent of institutional compliance with certain technological mandates of the TEACH Act; policies for digital content management; and emerging trends in the use of DRM systems.

In Chapter 8, “Copyright Education Programs,” Olga François examines the substance of programs that rely on the TEACH Act and the DMCA. François helps educators make sense of what a program must do to meet the legislatively mandated need for general “copyright education” and discusses information literacy standards. In doing so, she also describes best practices in copyright education at U.S. colleges and universities, offering recommendations for academic policy makers.

Chapter 9, “Copyright Law, Intellectual Property Policy, and Academic Culture,” concludes *The Center for Intellectual Property Handbook*. Rather than being simply a summation of the current situation, Clifford A. Lynch looks toward the future of teaching and learning in light of trends in intellectual property and information access. Lynch expounds on the nature of the academic mission, discusses current and pending legislation, describes various academic scenarios, and makes a forecast of what the future might hold.

The staff of the Center for Intellectual Property hopes that this handbook will serve as a useful tool for educators, information professionals, and anyone else who handles or oversees the transmission and storage of information, fostering deeper understanding of the many different ways in which copyright law impacts their work. Far from restricting the educational mission of academic institutions, the CIP hopes that the policies, guidelines, and procedures discussed in the following chapters will advance communication, learning, and scholarship.



---

## ► Acknowledgments

The Center for Intellectual Property would like to express its earnest appreciation of the following individuals for their contributions of expertise needed to complete the Center’s handbook: Kenneth Crews, Indiana University School of Law-Indianapolis; Laura “Lolly” Gasaway, University of North Carolina School of Law; Peggy Hoon, North Carolina State University Libraries’ and Cheryl Davis; Arnie Lutzker, Lutzker, Lutzker & Settlemeyer, LLP; Clifford Lynch, the Coalition for Networked Information (CNI). These authors represent the disciplines of education, law, information technology, and librarianship. Their writings convincingly speak to timely copyright issues that arise when digital works are a key component in delivering education worldwide.

Finally, the Center for Intellectual Property on behalf of Kimberly Kelley, Kimberly Bonner, and Olga Francois would like to acknowledge the efforts of the following CIP staff involved behind the scenes in the development of the project: Robert Burriesci, Michael VanderHeidjen, and Jack Boeve. The Center for Intellectual Property would like to thank the University of Maryland University College, the Center for Media and New Technology, Andy Joyce for his consistent artistic contributions and for the cover art of this book, and the Office of the Provost for their support of CIP’s work. And of course, we thank all of the patrons and participants involved in the CIP’s programming over the years.

---

