

Teaching to the World: Copyright, Fair Use, and You

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Digital Initiatives and Open Access

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Wednesday, November 7, 12

(introduce)



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We'll talk about: copyright; fair use; the TEACH act; the basics of open access; applied open access (oer commons, mit open courseware).

But really this is all framing for, I hope, a discussion. So please interrupt me if you have questions, and I hope you will participate in the discussion afterwards. Some things we might want to address, though this isn't an exhaustive list:

- what have *you* done with openly accessible educational materials;
- what materials of yours have you put up on the web (and how're they being archived/preserved);
- what are your hesitations, questions, perhaps fears or excitement about fair use, on either side?

1. Copyright

- exists regardless of whether you register it
- is yours until you give it away
- is for specific expressions
- is *not* for ideas, facts, processes, concepts, data



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So, just to review, here are some basics of copyright.

Copyright: how long does it last?

- **before 1923:** public domain
- **1923-1977:** 95 years after date of publication
 - **1923-1963:** renewal required
- **1978-now:** life of author plus 70 years
 - work for hire: 95-120 years depending on publication date
- **“publication”** == making work available to the public



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Anything published...

Giving rights away



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Giving rights away is not an all-or-nothing deal. As copyright holders, we can *specify* which rights we’re giving away. Tools for that include licenses, such as the CC license (basic requirement: most often attribution, also deals with Qs such as commercial use, creation of derivative works, and restrictions placed on derivative works (share alike)).

2. Fair Use

- (great overview: <http://fairuse.stanford.edu/>)
- subjective! (“10% rule” doesn’t always apply)
 - only way to really know is to take it to court
- applies to use for commentary, criticism, parody
- four factors
 - is the use transformative? (incl. new understandings)
 - is copyrighted work fact or fiction?
 - how much did you take, and is it the “heart” of the work?
 - are you depriving author of income?



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So, now, fair use. It’s a copyright principle that says as a member of the public, you are entitled to use other people’s work in order to comment on it or create a parody of it. This is subject to restrictions.

What can you use, that others have created, and how can you use it?

This is important to understand in order to make good decisions about what to *make available* and how.

Fair Use

- acknowledgment is not enough
 - ...though courts do consider it
- disclaimer is not enough
 - ...though courts do consider it
- Cabbage Patch vs Garbage Pail
 - “are you good or bad?”
- <http://is.gd/fairuseexamples>



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When you're on the side of using someone else's materials, there are certain rules to follow.

3. The TEACH Act

- Technology, Education, and Copyright Harmonization Act (2002)
- Redefines how digital materials can be used in distance education
- <http://is.gd/alateachact>



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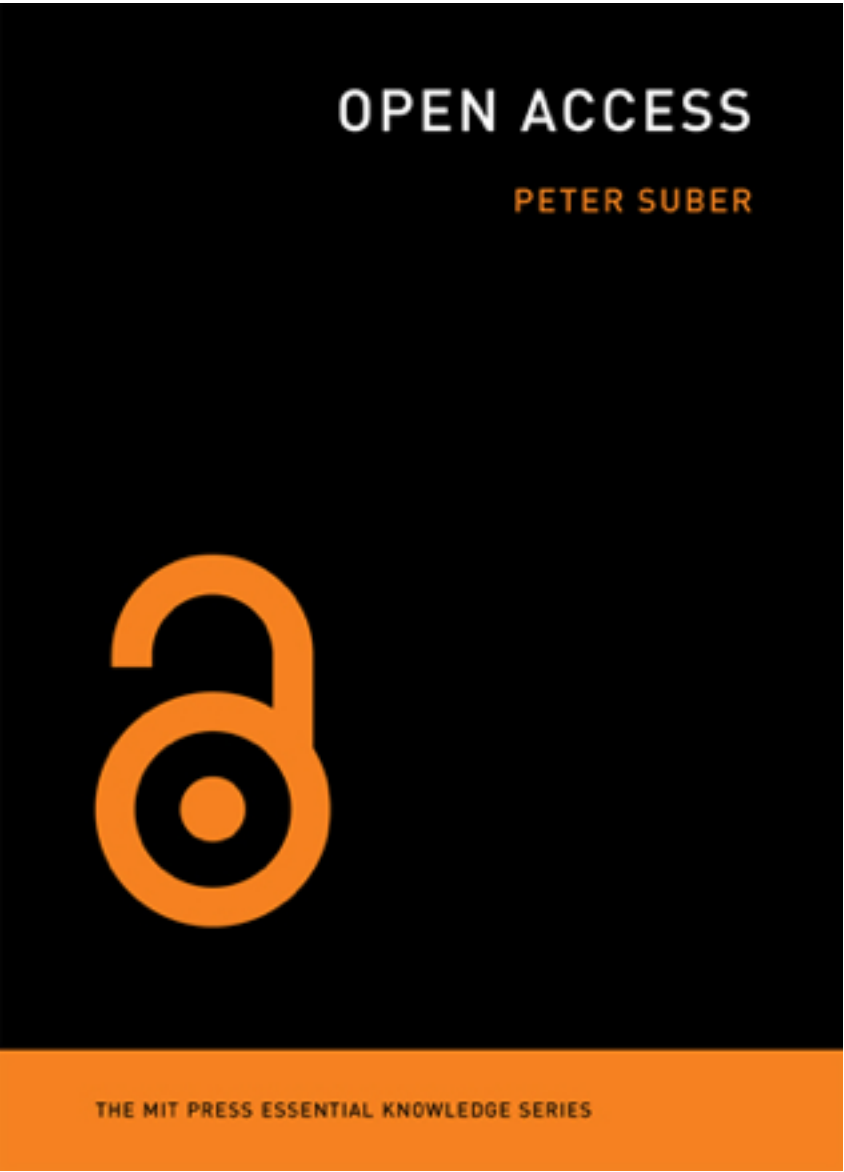
redefines how digital materials can be used for distance education

- works explicitly included, that weren't legislatively permitted before: dramatic works (but in limited quantities!)
- works explicitly excluded: anything illegally made or acquired
- good news for distance ed, but rigorous requirements to comply with
 - and still much more restrictive than what's permissible in a live classroom
- mostly applies at the institutional level, rather than individual-instructor level
 - and applies only to accredited, non-profit institutions at that
 - deals with when and how students can access materials, what portion of materials they can access, for how long they can access them, and whether they can make copies for personal use. ALA: "The law anticipates that students will access each "session" within a prescribed time period and will not necessarily be able to store the materials or review them later in the academic term; faculty will be able to include copyrighted materials, but usually only in portions or under conditions that are analogous to conventional teaching and lecture formats. Stated more bluntly, this law is not intended to permit scanning and uploading of full or lengthy works, stored on a website, for students to access throughout the semester-even for private study in connection with a formal course."
- permits digitizing of analog works, mostly when they're not already digitally available
 - limited temporary and long-term retention of copies
 - hathiitrust: a different matter [***explain]
- more on the TEACH Act: <http://www.ala.org/advocacy/copyright/teachact/>

4. Open Access

- digital
- online
- free of charge
- free of ***most*** copyright and licensing restrictions





4. Open Access

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- free of ***most*** copyright and licensing restrictions
- compatible with peer review



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And here's one more thing that's true about open access: it's compatible with peer review. This plays out in an important way with research articles: most publishers, including quite traditional ones with highly respected peer-reviewed journals,

Noah Wardrip-Fruin: *Expressive Processing*

- <http://grandtextauto.org/2009/05/12/blog-based-peer-review-four-surprises/>
- Review as Conversation
- Time Inflexibility
- Comparison with Press-Solicited Reviews
- Generosity with Expertise



Kathleen Fitzpatrick, *Planned Obsolescence*

- <http://mediacommons.futureofthebook.org/mcpress/plannedobsolescence/>



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Planned Obsolescence: Publishing, Technology, and the Future of the Academy
I'm showing you this mainly for the interface.

...



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Why is peer review relevant to us here? Because *this* form of peer review is actually *collaboration*. It’s conversation. And that’s one of the big reasons, as we’ll see, that people put their educational resources online.

5. Applied Open Access

- OER Commons
- MIT OpenCourseWare



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why people make teaching/learning resources openly available

- philanthropy without *direct* application of money
 - worldwide, modulo digital divide
- feedback
 - indistinguishable from peer review in practical effect!
- finding collaborators, having your stuff improved through no add'l effort from you

what kinds of resources do people make openly available

Thank you!

<http://fairuse.stanford.edu/>

<http://is.gd/fairuseexamples>

<http://is.gd/alateachact>

<http://dcommon.bu.edu/>

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