

KEEPING A TIGHT L.I.P. POLICY: OPINIONS & OPTIONS

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October 17, 2013

EVMS
Eastern Virginia Medical School

PHYSICIAN ASSISTANT PROGRAM

INTRO & DISCLOSURE

- This is me...
- I have no financial disclosures to make
- I receive no compensation from the pharmaceutical or medical product industry or any other industry/corporation I discuss
- I am not a lawyer...

OBJECTIVES

- Define “Intellectual Property” and “Copyright” in the context of PA education, lecture content, development, and delivery
- Become familiar with copyright laws and fair use doctrine in higher education
- Potential abuses of lecture content
- Options for protecting LIP

INTELLECTUAL PROPERTY

- Distinct types of creations of the mind
- “Imagination made real”
 - The ownership of dream, an idea, an improvement, an emotion that we can touch, see, hear, and feel.
 - It is an asset...
- 4 broad categories:
 - Patents, Trademarks, Copyrights, Trade Secrets

INTELLECTUAL PROPERTY (CONT.)

□ Objectives

- Provide financial incentive
- Maintain economic growth
- Protect the moral rights of the creator
 - Natural Rights/Justice (Locke)
 - Utilitarian-Pragmatic
 - “Personality” (Hegel)

Why discuss LIP?

- How do you prepare a new lecture?
- How much time does it take you to research, distill, and create the lecture?
- How do you distribute this “work” to your students?
- With the increasing numbers of PA programs and students, how long before...

COPYRIGHT INFRINGEMENT

THE RECYCLED LECTURE



NOTE SERVICES



COPYRIGHT

- “A form of protection” for “original works of authorship” ... “fixed in a tangible form of expression”
 - Protection is not unlimited in scope
 - Protection begins once work is “fixed”
 - Fixation need not be directly perceptible so long as it may be communicated with the aid of a machine or device

COPYRIGHT (CONT.)

□ EXCLUSIVE RIGHTS (§106)

- Reproduce the work
- Prepare derivative works
- Distribute copies or phonorecords by transfer or ownership (sale) or by rental, lease, or lending
- Publically...
 - ...display...
 - ...perform...
 - ...broadcast the work

COPYRIGHT (CONT.)

□ AUTHOR? Employee vs. Employer

□ “Work made for hire”

□ Work prepared within the scope of their employment

- OR -

□ Work specifically ordered or commissioned for use as...

...if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

COPYRIGHT (CONT.)

- Protected Categories:
 - Literary works
 - Musical works + words
 - Dramatic works + music
 - Pantomimes & choreographic works
 - Pictorial, graphic, & sculptural works
 - Motion pictures & AV works
 - Sound recordings
 - Architectural works

COPYRIGHT (CONT.)

- What is NOT protected?
 - Unfixed works
 - Improvised speech not written down or recorded
 - Choreograph not notated or recorded
 - Works of the Federal Government
 - Titles, names, phrases, slogans, symbols or designs
 - Ideas, procedures, methods, systems, processes, concepts, principles, discoveries or devices**
 - Raw data
 - Works consisting entirely of **common property** information and no original authorship

“COMMON PROPERTY”

- Not defined!

- Public Domain

 - “Not a place”

 - Work no long under protection or does not meet the requirements for protection

COPYRIGHT EXPIRATION

- Determined by date of fixation:
 - Prior to 1923 w/o author :: 90 years
 - After 1/1/1978...
 - Single author :: life + 70 years
 - Joint authorship :: 70 years after last author's death
 - Made for hire :: shorter of 95 years from publication
- OR - 125 years from creation

FAIR USE DOCTRINE

- An statutory exception (§107)
 - Use without permission to contribute to public discourse without significant harm to the author
- Must consider four things:
 - Purpose and character of the use
 - Nature of the protected work
 - Amount and substantiality of portion used
 - Effect of the use on markets for the original

FAIR USE DOCTRINE (CONT.)

- Challenged by technology
- TEACH Act

WHAT ABOUT LECTURES?

□ Historical Context

- PowerPoint
- Distance education expansion
- Cases

□ Current Opinions

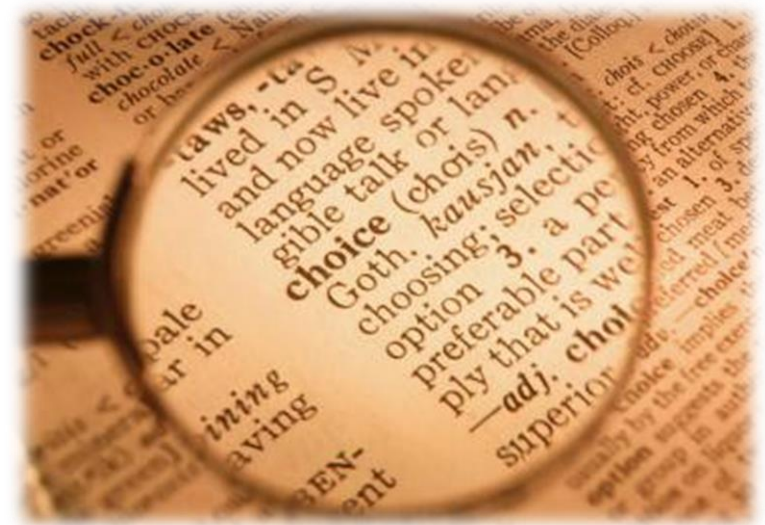
- American Association of University Professors
- Legalzoom.com

WHAT ABOUT STUDENTS' NOTES?

- “If students’ notes are sufficiently original, then they have created a derivative work that impliedly authorized by the faculty.”
– Office of Counsel, The University of Alabama

AVENUES FOR PROTECTING LIP

- Institutional Policy
- Syllabus Statement
- PPT Alterations
- Lecture Distribution
- LectureTools



PROTECTING LIP: General Policy

□ Institutional Policy

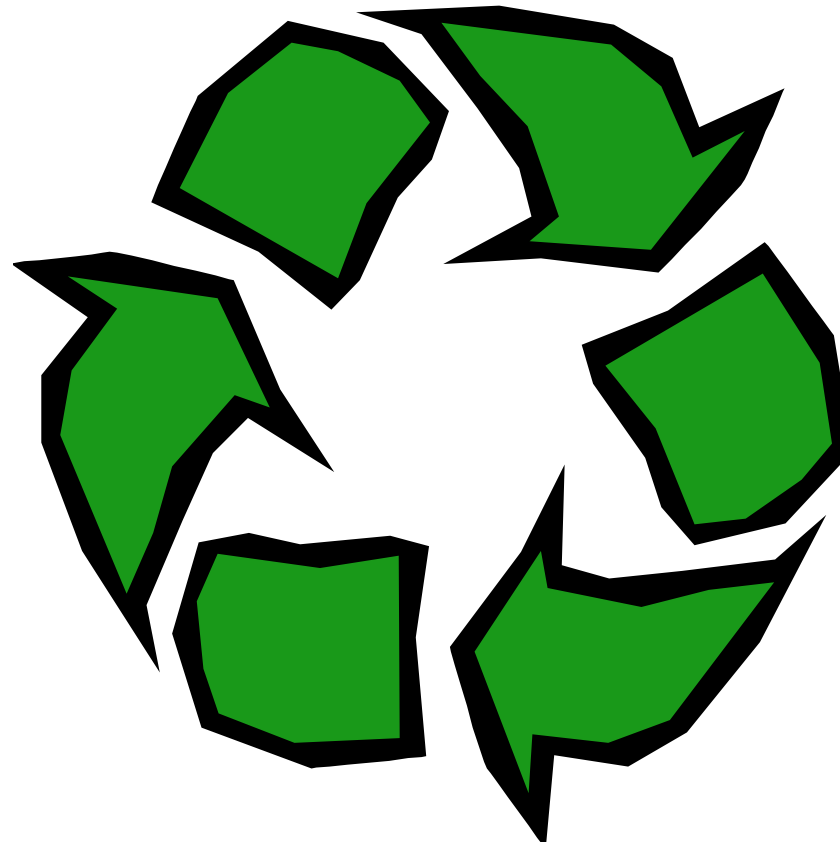
- Be proactive...once you need it, it's too late.
- Be consistent!

PROTECTING LIP: Syllabus

□ Syllabus Statement

- “Copyright YYYY Name as to this syllabus and all lectures. Students are prohibited from selling (or being paid for taking) notes during this course to or by any person or commercial firm without the express written permissions of the professor teaching this course.” – U of Alabama
- University of California - Davis

LECTURE PREP



PROTECTING LIP: Lecture Prep

- Give credit where credit is due
 - Professional courtesy
- PPT Alterations
 - Add “© YYYY John Doe” to your slides/handouts
 - Situated to give “reasonable notice” of the copyright claim
 - Not required but beneficial
 - Avoids “innocent infringement” defense

COPYRIGHT SLIDE



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PROTECTING LIP: Distribution

- Native PPT file vs. Adobe
 - Don't make it easy to repurpose your work
 - Advantages & Disadvantages to both

PROTECTING LIP: Delivery

- Beginning of Class Statement (U. of Alabama)
 - “My lectures are protected by state common law and federal copyright law. They are my own original expression and I record them at the same time that I deliver them in order to secure protection. Whereas you are authorized to take notes in class thereby creating a derivative work from my lecture, the authorization extends only to making one set of notes for your own personal use and no other use. You are not authorized to record my lectures, to provide your notes to anyone else or to make any commercial use of them without express prior permission from me.”

PROTECTING LIP: Delivery (CONT.)

□ OTHER CONSIDERATIONS

- Audio Recordings
- Video Recordings
 - Opt in vs Opt out

PROTECTING LIP: Lecture Tools

The screenshot displays the LECTURETOOLS web interface. At the top, it shows the user's name (welcome Perry Samsen), account management options, and course selection (LECT 101, ENG 110, AOS5 202 - 001). The main interface is divided into several sections:

- PREPARE:** Includes options for 'Import Slides', 'Create Interactive Activity', and 'Edit Slides'. A 'Lecture Dates' panel shows 'Wednesday 3/14/2012' and 'Friday 3/16/2012'.
- PRESENT:** The central area displays a slide titled 'TEMPERATURE AND EXTREMES' with a background image of snow-capped mountains. To the right of the slide are interactive elements: 'Check Slides', a 'Where was the hottest ...' map, and an 'Image Map-Question'.
- ADDRESS:** A 'Notebook' panel on the right contains text about 'Hottest places in the USA' and 'Coldest places in the USA'.

The notebook text is as follows:

Hottest places in the USA

- Oriental Ranch, CA 134 degrees F
- Lake Havasu City, AZ 126 degrees F
- Ladlow, NV 122 degrees F

Coldest places in the USA

- Prospect Creek Camp, AK -63 degrees F
- Rogers Pass, MT -73 degrees F
- Peter's Sink, UT -63 degrees F

COPYRIGHT CRITICS

- Ambiguous Term
- Ideas ≠ Physical Property

- Copyleft
- Open Source education
 - MOOCs
 - FOAM



Copyright



Copyleft

WHAT DO YOU DO NOW?

- Check your employment agreement
- Ask legal

REFERENCES & RESOURCES

- www.copyright.gov
- www.lecturetools.com

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