Intellectual Property in E-Learning
Objectives

- Preview the usual steps to the building of e-learning
- Consider how e-learning may involve unique intellectual property considerations
- Explore intellectual property guidelines and practices
- Understand building e-learning legally from the beginning
The Usual Course Build Trajectory
Building Professionally from the Get-Go

- Clarifies standards early on for all dev team members
- Illuminates the work and the planning (and allows time for IP pursuit / accessibility design)
- Saves on the team’s time and effort
- Helps dev team take advantage of legally usable contents (open-source, Creative Commons™ released contents, public domain contents, and others)
- Avoids costs of future litigation
- Avoids the need for e-learning retrofitting
- Enhances the quality of the e-learning
Some Assumptions of the E-Learning

- Non-commercial e-learning
- Various forms of e-learning courses, short-courses, modules, and digital learning objects; tutorials
- May be facilitated by instructors / may be non-facilitated or automated
- Taught or delivered at accredited US institutions
- Taught in the US context
- May be sharable among the institutions of higher education in the consortium
Intellectual Property

In E-Learning
What is...IP?

- **Intellectual Property**: “…legal monopolies over creations of the mind, both artistic and commercial, and the corresponding fields of law. Under intellectual property law, owners are granted certain exclusive rights to a variety of intangible assets, such as musical, literary, and artistic works; discoveries and inventions; and words, phrases, symbols, and designs.”

- Copyrights, trademarks, patents, and trade secrets
Why Intellectual Property in E-Learning?

- Electronic storage, “publication,” and distribution of digital contents in an online course
- Content capture and archival (including of student work) of synchronous sessions
- Student ownership of their own produced works
- Easy cracking and forwarding of digital materials via email, social networking spaces, the WWW, and Internet
- Wide awareness of IP contravention, the trackability of files, digital rights management (DRM) powers
- Stepped-up efforts by various content-provider industries (movies, music, and book publishing) to protect their IP rights
Copyright Basics

- A creative work recorded in fixed tangible form has de facto copyright at the moment of its creation.
- Historically, copyright extended about 14 years, but over time, these laws have evolved to extended to the present state.
- Owners (and their descendents) of a work have the rights to copy, distribute, and gain reward from their works for 70 years after the death of the author or 95 years from the date of publication if a work is of “corporate authorship” (for works created 2002 onwards).
Copyright Basics (cont.)

• Copyright involves a bundle of five basic rights:
  1. To reproduce a work
  2. To distribute a work
  3. To create derivative works
  4. To perform the work
  5. To display the work

• These are considered exclusive rights which may belong to an individual or a group.

• Co-authored works are equally shared by all those sharing the bylines, no matter how the work was divided.

• Works-for-hire belong to the employer, not the person who created the work as a work-for-hire.
Fair Use Exception

- **Section 107** of the US Copyright Act (1976) allows fair use exceptions for teaching, scholarship and research, for limited educational purposes.

- “Fair use” depends on
  - The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes
  - The nature of the copyrighted work
  - The amount and substantiality of the portion used in relation to the copyrighted work as a whole
  - The effect of the use upon the potential market for, or value of, the copyrighted work
The TEACH Act Exceptions

- The Technology, Education and Copyright Harmonization Act
- Allows for the transmitting of performances of a non-dramatic literary or musical work (such as a poetry or a short story reading and all music besides opera, music videos, and musicals)
- Allows the transmitting of “reasonable and limited portions” of other performances of films, videos, and dramatic musical works
- Allows the transmitting of any work “in amounts comparable to face-to-face displays” with many caveats
TEACH Act Contextual Assumptions

- Non-profit accredited educational institution with a policy regarding the use of copyrighted materials
- Works have been lawfully made and acquired
- Works an integral part of the course session and learning
- Only reasonable portions of the work used
- Downstream controls applied
- Disallowance of retaining the works longer than the course session (through policy and technological means)
- The Digital Millennium Copyright Act of 1998
Exempted Works to TEACH Act

The TEACH Act does not apply to:

- E-reserves, coursepacks (electronic or print), interlibrary loan materials; the digital delivery of supplemental reading materials
- Commercial documents
- Textbooks or digital contents “provided under license”
- The conversion of materials from analog to digital formats “except when the converted material is used solely for authorized transmissions and when a digital version of a work is unavailable or protected by technological measures,” according to the Copyright Clearance Center
Learner Protections

- Media releases to protect against assertions of privacy infringement
- Copyright releases for uses student work beyond typical classroom uses for learning
Developer Releases

- Clear contractual agreements (and rights releases) with all course developers, subject matter experts (SMEs), photographers, writers, videographers, interview subjects, etc.

- A clear policy on the ownership of the created contents and possible secondary, tertiary, and other uses
Trademark Basics

A trademark or service mark (logo, phrase, unique terms, membership marks, seals of approval, particular looks-and-feels / designs)...

- Identifies the source of products or services
- Distinguishes the trademark’s owner, products, or services from others
- Helps consumers identify goods and services, and protects them by preventing confusion or fraud
- Protects the trademark owner’s investment
Avoiding Trademark Dilution

- Conduct a due diligence search of desired terms or names via the Web and also the United States Patent and Trademark Office; do formal and legal in-country searches if creating learning for an overseas context
- Register the trademark with the United States Patent and Trademark Office (USPTO)
- Use the trademark regularly and consistently
- Protect the trademark against unauthorized use by others
- Avoid letting the term become a “generic”
Patent Basics

- Follow due diligence to verify that an idea or process or product or technology is new and not emulative of other patents
- Apply to patent non-obvious creations that are useful
Trade Secrets Basics

- Handle with care all the following: formulas, patterns, compilations, programs, devices, methods, techniques, or processes that have economic value or potential.
- Understand the Uniform Trade Secrets Act at the federal level but also the state laws prohibiting the sharing of trade secrets.
IP Work

- Check the provenance (origins) of all contents used. Document the provenance in the “metadata” of the digital object.
- Ensure that open-source, Creative Commons-released contents, open-courseware, and public domain contents really are legitimately released by the creator of the contents.
- Request rights uses for all possible uses and for such releases to go into “perpetuity” if possible. Simplify the copyright chase.
- Do not enter into any contracts without university approval, particularly if there are costs involved.
- Document all copyright release policies on sites from which you would use contents.
- Read the fine print. Talk to your lawyers.
Alternatives

- Link to resources instead of subsuming them into the course contents.
- Create your own contents from scratch, while following “professional” raw materials capture and building.
- Access free contents from for-profit companies that give away some of the contents (such as clip art from Microsoft).
- Access digital repositories with the proper level of Creative Commons release on all contents.
- Pursue “orphaned works” if that legislation passes. Document all the efforts at pursuing copyright clearance to use certain works.
Some Online IP Resources

- US Copyright Office
- US Patent and Trademark Office
- USPTO Trademark Electronic Search System (TESS)