Open Minded
OA, OERs, and more…

**CSUN Oviatt Library,
October 21, 2015**

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Agenda

- UC Open Access Policy
- UCLA Library's Affordable Course Materials Initiative
- Data Management and Ownership
- UCLA and video streaming
- Recent Court Decisions & more

Disclaimer

I am not an attorney. As such, nothing in the following class should be construed as legal advice. Should you face a copyright issue of particular sensitivity, you should consult with an intellectual property attorney (or your campus counsel).

UC Open Access Policy

The policy ensures that future research articles authored by faculty at all 10 campuses of UC will be made available to the public at no charge.
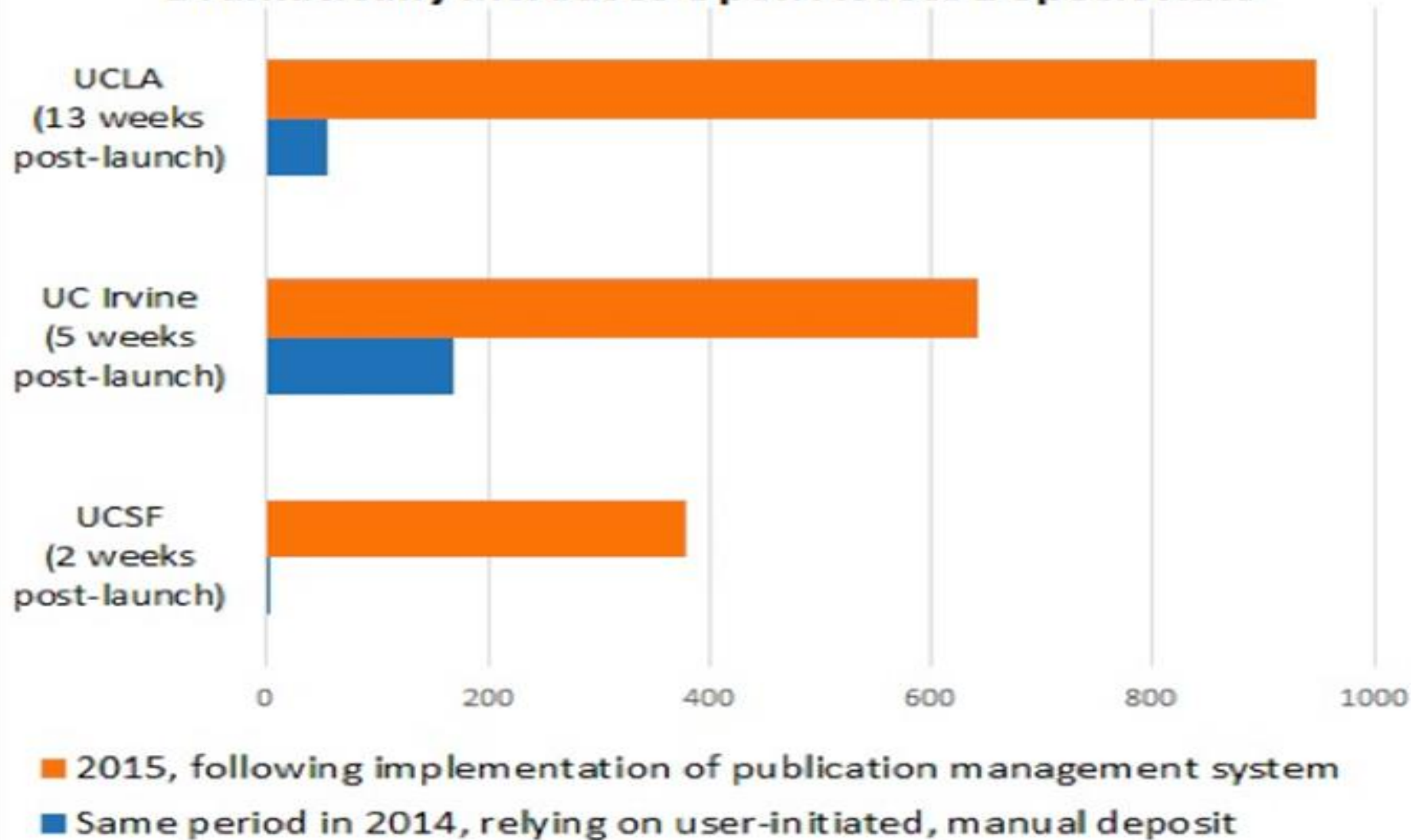
http://osc.universityofcalifornia.edu/

The UC policy "requires" faculty to "opt-out."
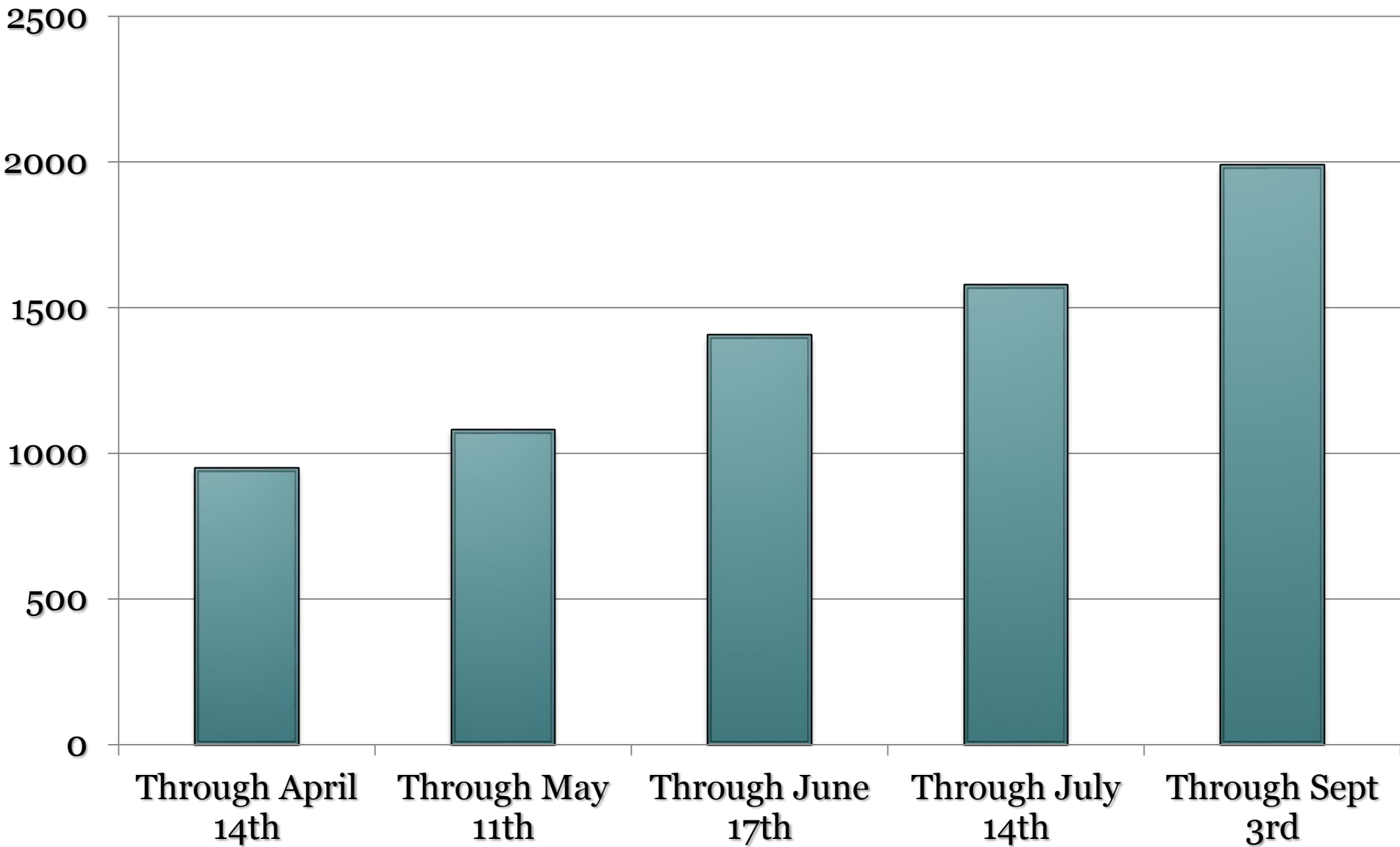**The Cal State policy is "opt-in" in contrast.**

OA Policy Implementation Timeline

1. UC Open Access Policy goes into effect Summer of 2013

   ➢ Deposits are made manually into eScholarship to comply

2. The Publication Management System is launched in 2014

3. "Harvester" emails begin in January, 2015

   ➢ UCLA is the first campus

Publication Management System Dramatically Increases Open Access Deposit Rate

- 2015, following implementation of publication management system
- Same period in 2014, relying on user-initiated, manual deposit

UCLA Completed Deposits

Assisting Faculty

- Many faculty were *still* unaware of the policy 2 years on
- Some simpler questions were handled in email
- Often the best approach was meeting in person, at their workstation
- Great opportunity for getting on their department meeting agendas

Faculty emails	
Total emails with Practical Questions in first 3 weeks	**52**
I would like personal assistance in using the interface	10
Login Problems	7
My name is spelled wrong / try this alternate spelling	6
I am assisting a faculty member and need assistance	5
What articles are you referring to? (The list not in the email, so I don't understand.)	4
Please come to a faculty meeting to explain	3
I have more citations than what is listed, how can I enter them?	3
Does this policy satisfy the NIH Public Access Policy, or vice versa?	3
How do I confirm and/or alter my "claim" selections?	3
The system is too slow / hard to use, I give up	2
How can I confirm which articles are allowed as open access?	2
I am no longer at UCLA	2
Some items in the list are already uploaded to eScholarship	2
You have me mixed up with someone else	2
I don't have time to do this	2
I have claimed my articles, do I need to do more?	1
The articles you have chosen are not my most significant publications	1

One-on-one consultations
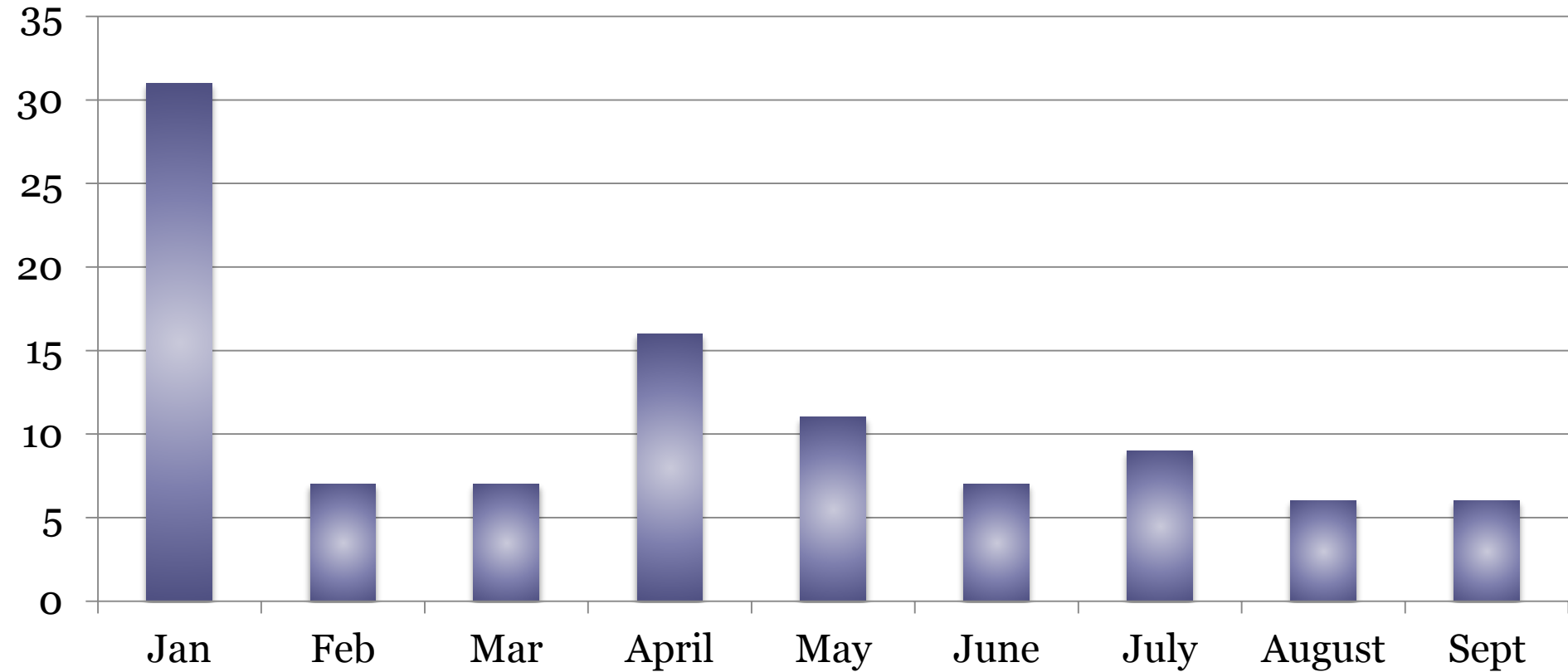
100 consultations and counting
…and that's just <u>my</u> consultations.

UCLA Library's Affordable Course Materials Initiative (ACMI)

A grant program to encourage instructors to identify and use low-cost or free alternatives to expensive course materials

- $1000 for courses with less than 200 students
- $2500 for courses with more than 200 students

UCLA Library's Affordable Course Materials Initiative (ACMI)

1. Maximize the employment of Fair Use
2. Work with librarians to find:
   - ✓ Library-licensed materials
   - ✓ Open Educational Resources (OERs)
3. Or, use the money to fund:
   - ➢ Course-specific Digitization projects
   - ➢ OER creation and dissemination

ACMI Pilot Results

In the first year, 23 grant applications were approved, with a total payout of $27,500, plus an additional $3792 spent on acquisitions

1525 students were enrolled in these courses
Total savings: **$161,288**
Average per student savings: **$105**

Plus: many intangible rewards

Data Management and Ownership

UCLA Library has many initiatives and services surrounding data, including:

➢ Data Management Planning
➢ Data Curation
➢ Data Visualization tool support
➢ Dataset acquisitions

Data Management and Ownership

Recent controversies have spurred the accelerated release of:

UCLA Interim Guidance on "Access to and Management of Research Data and Tangible Research Materials."

http://ora.research.ucla.edu/Pages/AnnouncementDetail.aspx?ID=300

UCLA streaming video dispute

UCLA was accused by the Association for Information Media and Equipment (AIME) and Ambrose Video Publishing of copyright infringement, related to streaming video content within its password protected course management system.

AIME filed suit, and UCLA's attorneys responded with a Motion to Dismiss on several technical issues, which was granted.

http://dockets.justia.com/docket/california/cacdce/2:2010cv09378/489296/

UCLA and video streaming since then…

UCLA policies regarding digitizing and streaming video content for courses have not changed, but…

Products are increasingly offering a streaming rights option, which campus counsel has advised we purchase.

Recent court decisions

Wiley & Sons Inc. v. Kirtsaeng

This important 2013 ruling by the Supreme Court upheld the First Sale Doctrine, vital to libraries' ability to lend copies of books in their collection, and asserted there is no "geographic" limit to first sale.

Authors Guild v. Hathi Trust

The district court dismissed the case, and in the ruling stated "the present application of the HDL are protected under fair use." The decision was upheld on appeal.

http://www.hathitrust.org/authors_guild_lawsuit_information

http://dockets.justia.com/docket/new-york/nysdce/1:2011cv06351/384619/

Authors Guild v. Google

Appeals court judge Pierre Laval affirms that Google's copying of entire books was within fair use. Authors Guild has stated publicly they will seek review by the Supreme Court.

A good summary can be found here: https://www.eff.org/deeplinks/2015/10/big-win-fair-use-google-books-lawsuit

Georgia State lawsuit

Backed by the Association of American Publishers and the Copyright Clearance Center, Cambridge University Press, Oxford University Press, and SAGE Publications sued Georgia State University alleging "systematic, widespread and unauthorized copying and distribution of a vast amount of copyrighted works" via GSU's e-reserves, course management, and other systems.

Georgia State has largely prevailed, but on appeal **the 11ᵗʰ circuit has reversed the decision** and remanded.

The "Happy Birthday" case

Or, Good Morning to You Productions v. Warner/Chappell Music, Inc.

The district court issued summary judgment on the copyright status of this song.

You probably heard about this.
So you tell me.
What happened?

The "Happy Birthday" case

✓The music was found to be in the public domain, but...

XThe lyrics were only ruled to <u>not</u> be the property of Warner/Chappell, though they were <u>not</u> found to be in the public domain. Therefore, it is an <u>orphan work</u>.

➢This has interesting parallels with the U.S. Copyright Office's plan to address Orphan Works with a Collective Rights Organization (CRO).

Thanks!
Any questions?

Acknowledgements

The following slides are adapted from the work of the UCLA Library's **Scholarly Communications Steering Committee** and are available for reuse via Creative Commons Attribution 4.0 International License

Bonus Slides: Review of Key Resources

For the Basics…

U.S. Copyright office Circular #1, entitled

"Copyright Basics"

http://www.copyright.gov/circs/circ1.pdf

Know Your Copy Rights™

Proposed Use				
	Exhibit materials in a live classroom?	**Post materials to an online class?**	**Distribute readings?**	**Create electronic reserves?**
Works Not Copyrighted — **Public Domain Works** (US Govt. and pre-1923 works, and certain other works)	Yes	Yes	Yes	Yes
Copyrighted Works — **Your Own Works** (if you kept copyright or reserved use rights)	Yes	Yes	Yes	Yes
Open Access Works (works available online without license, password, or technical restrictions)	Yes	Link	Link	Link
Electronic Works Licensed by Your Institution (depends on license, but usually permitted)	Yes	Link	Link (Most licenses also allow students to make an individual copy.)	Link
Electronic Works with a Creative Commons License (depends on license, but usually permitted; if not, LINK)	Yes	Yes	Yes	Yes
Other Works (when none of above apply)	Yes	Yes, if meets either TEACH Act or Fair Use standards. If not, LINK or seek permission.	Yes, if meets Fair Use standards. If not, LINK or seek permission.	Yes, if meets Fair Use standards. If not, LINK or seek permission.

Legal Status of Work To Be Used

Handy Tools

ARL's

"Know Your Copy Rights" Brochure

The "Slider" tool for Determining Copyright Status

http://librarycopyright.net/digitalslider/

From the ALA Office for Information Technology Policy
FYI: The slider is also available for purchase in hard copy

PDF Version

Copyright Term and the Public Domain in the United States
1 January 2010[1]

Never Published, Never Registered Works[2]		
Type of Work	**Copyright Term**	**What was in the public domain in the U.S. as of 1 January 2010[3]**
Unpublished works	Life of the author + 70 years	Works from authors who died before 1940
Unpublished anonymous and pseudonymous works, and works made for hire (corporate authorship)	120 years from date of creation	Works created before 1890
Unpublished works when the death date of the author is not known[4]	120 years from date of creation[5]	Works created before 1890[5]

Works Registered or First Published in the U.S.		
Date of Publication[6]	**Conditions[7]**	**Copyright Term[3]**
Before 1923	None	None. In the public domain due to copyright expiration

The Section 108 Spinner

The following online tool can be a quick and easy way to remind yourself of the limitations of Section 108:

http://www.librarycopyright.net/108spinner/

Key Online Resource

The ALA Copyright Advisory Network's "Exceptions for Instructors eTool"

http://www.librarycopyright.net/edexceptions

CHECKLIST FOR FAIR USE

Please complete and retain a copy of this form in connection with each possible "fair use" of a copyrighted work for your project

Name:_____   Date:_____

Institution:_____   Project:_____

PURPOSE

Favoring Fair Use

- ❑ Teaching (including multiple copies for classroom use)
- ❑ Research
- ❑ Scholarship
- ❑ Nonprofit Educational Institution
- ❑ Criticism
- ❑ Comment
- ❑ News reporting
- ❑ Transformative or Productive use (changes the work for new utility)
- ❑ Restricted access (to students or other appropriate group)
- ❑ Parody

Opposing Fair Use

- ❑ Commercial activity
- ❑ Profiting from the use
- ❑ Entertainment
- ❑ Bad-faith behavior
- ❑ Denying credit to original author

NATURE

Favoring Fair Use

- ❑ Published work
- ❑ Factual or nonfiction based
- ❑ Important to favored educational objectives

Opposing Fair Use

- ❑ Unpublished work
- ❑ Highly creative work (art, music, novels, films, plays)
- ❑ Fiction

AMOUNT

Favoring Fair Use

- ❑ Small quantity
- ❑ Portion used is not central or significant to entire work
- ❑ Amount is appropriate for favored educational purpose

Opposing Fair Use

- ❑ Large portion or whole work used
- ❑ Portion used is central to work or "heart of the work"

EFFECT

Favoring Fair Use

- ❑ User owns lawfully acquired or purchased copy of original work
- ❑ One or few copies made
- ❑ No significant effect on the market or potential market for copyrighted work
- ❑ No similar product marketed by the copyright holder
- ❑ Lack of licensing mechanism

Opposing Fair Use

- ❑ Could replace sale of copyrighted work
- ❑ Significantly impairs market or potential market for copyrighted work or derivative
- ❑ Reasonably available licensing mechanism for use of the copyrighted work
- ❑ Affordable permission available for using work
- ❑ Numerous copies made
- ❑ You made it accessible on Web or in other public forum
- ❑ Repeated or long term use

Handy Tools

Cornell's "Checklist for Fair Use"
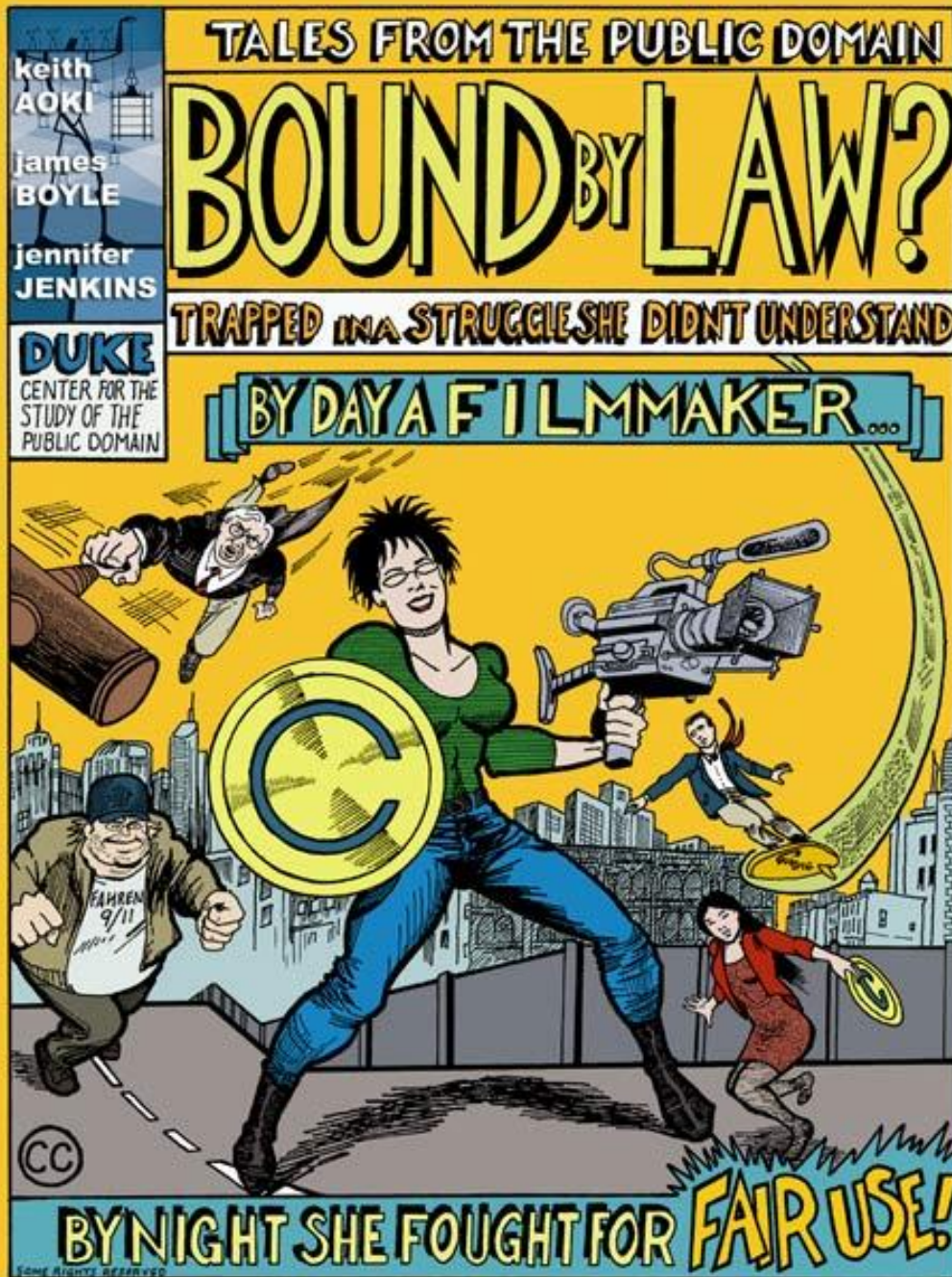
Handy Tools

Duke's

"Bound By Law?"

Comic Book

http://www.law.duke.edu/cspd/comics/

Summaries of Fair Use Cases

Many of the previous cases, plus many more addressing Fair Use determinations, are referenced and briefly summarized here:

http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter9/9-c.html

Recommended Readings on Fair Use

- Crews, Kenneth. ***Copyright Law for Librarians and Educators***. ALA Editions, 2005. 0-8389-0906-X.
- Russell, Carrie. ***Complete Copyright: An Everyday Guide for Librarians***. ALA Editions, 2004. 0-8389-3543-5.
- Vaidhyanathan, Siva. ***Copyrights and Copywrongs.*** NYU Press, 2001. 0-8147-8806-8.

Key Web Resources on Fair Use

- US Copyright code and Fair Use page, US Copyright Office
  http://www.copyright.gov/fls/fl102.html
- ALA Copyright Advisory Network
  http://www.librarycopyright.net/
- Stanford's Copyright and Fair Use pages
  http://fairuse.stanford.edu/

Search copyright information

Works registered and documents recorded by the U.S. Copyright Office since January 1, 1978.

|| Online Records ||

Search the Catalog

Search records of registered books, music, art, and periodicals, and other works. Includes copyright ownership documents.

About the Catalog

View Tutorial

|| Other Services ||

Find records prior to January 1, 1978

How to Register a Copyright

How to Record a Document

How to Get Copies of Copyright Office Records & Deposits

http://www.copyright.gov/records/

The SPARC Author Addendum

http://www.arl.org/sparc/author/addendum.shtml

Scholar's Copyright Addendum Engine

The Scholar's Copyright Addendum Engine will help you generate a PDF form that you can attach to a journal publisher's copyright agreement to ensure that you retain certain rights.

(get started)

Description

Each addendum gives you non-exclusive rights to create derivative works from your Article and to reproduce, distribute, publicly perform, and publicly display your article in connection with your teaching, conference presentations, lectures, other scholarly works, and professional activities. However, they differ with respect to how soon you can make the final published version available and whether you can authorize others to re-use your work in various ways. Below is a summary of the available options.

Science Commons / SPARC Addendum

Access - Reuse:
> You retain sufficient rights to grant to the reading public a Creative Commons Attribution Non Commercial license or similar license that allows the public to re-use or re-post your article so long as you are given credit as the author and so long as the reader's use is non-commercial. (This is a joint offering from Science Commons and SPARC and represents a new version of the former SPARC Addendum.)

Other Options From Science Commons

The Science Commons Addendum Engine

http://scholars.sciencecommons.org/

SHERPA RoMEO

. . . opening access to research

Publisher copyright policies & self-archiving

Use this site to find a summary of permissions that are normally given as part of each publisher's copyright transfer agreement.

Search

Search ⦿ **Journal titles or ISSNs** ○ **Publisher names**

for [   ]

find ○ **contains** *or* ⦿ **starts with** *or* ○ **Exact** phrase only ○ **ISSN**

Show open access mandate compliance in results for:

[No funders ▼]

[Search] [Reset]

Browse

RoMEO News

- **Latest Updates to RoMEO**
- **FAQ**
- SHERPA/RoMEO API V.1 now switched off! - 11-January-2010
- Major Upgrade to RoMEO released - 22-Oct-2009
- RoMEO reaches 600 publishers - 27-May-2009
- JULIET: Selected research funders' grant expenditure
- Publishers Allowing use of their PDFs in Repositories
- Publishers with Paid Options for Open Access

Recently Added Publishers

📶 RSS1 Feed

http://www.sherpa.ac.uk/romeo/

http://creativecommons.org/choose/

http://search.creativecommons.org/