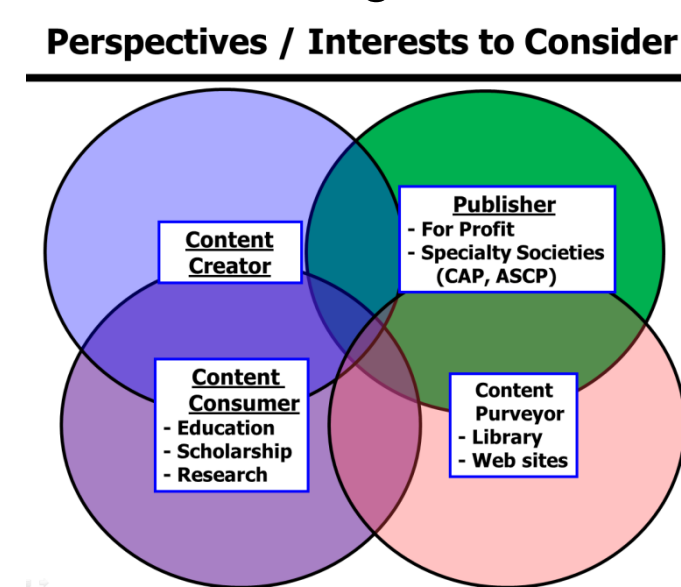


RATIONALE/NEED

- Medical knowledge base: ever-expanding in breadth and depth
- Audience: Increasingly high expectations for polished, accessible, relevant content
 - Curriculum materials
 - Resources, vetted
- In that context, it is challenging to
 - Construct comprehensive and high-quality medical education teaching materials and interactions based on one's own collection of images, diagrams, and tables.
- Increasingly easy electronic access to a wealth of outstanding material from journal articles, textbooks, and Internet content allows for the gathering of content to illustrate a specific concept.
- All of these potential resources are copyrighted, either explicitly or implicitly.
- “Fair use” provisions of the Copyright Act of 1976 permit the use of limited amounts of copyrighted materials and spell out four “factors” that must be considered.
- There is virtually no peer-reviewed, published guidance regarding the use of such material in the medical education setting.
- Various interests and perspectives must be considered in the academic use of copyrighted materials including the copyright holder (author -- sometimes us -- and in some cases a publisher) and the user and his/her audience



METHODS/DESCRIPTION

- Objective:**
 - Evaluate the “fair use” of copyrighted **educational materials** within the confines of **medical education**
 - Define opportunities and limitations in the use of copyrighted materials
 - In **lectures**
 - In **curricula**
- Define Critical Limitation:**
 - Use of materials limited to within a campus Intranet
- Methods and Materials:**
 - Evaluate existing United States copyright law, including the four “fair use” criteria and the “TEACH” (Technology, Education, and Copyright Harmonization) Act, with respect to medical education
 - Literature, Web-based resources, and textbooks were queried and evaluated when available
 - Virtually no detailed reference to copyright and fair use in the medical education setting was identified in the PubMed-indexed medical literature
 - Define the opportunities and limitations in the use of copyrighted material by evaluating a wide variety of use-cases
- Audience: Medical Education**
 - Medical students
 - Residents
 - Fellows
- Content / Modalities** to address a specific topic area – Faculty / Specialist Vetted
 - Lectures
 - PowerPoint
 - Text file
 - “Textbooks” – standard and electronic
 - Remain a cornerstone of medical and graduate medical education (GME)
 - Peer-reviewed articles PDF's
 - Diagrams
 - Tables
- Goals:**
 - Distinguish critical elements of “fair use” provisions of the US Copyright law relevant to medical education
 - Develop “Use Case” examples exemplifying
 - Fair use of copyrighted material
 - Context of use
 - Volume used
 - Appropriate citation of materials
 - Source appropriately credited
 - Source accessible to interested parties

RESULTS

Copyright Law: Key Components

Copyright Law
OF THE UNITED STATES OF AMERICA
Title 17—Copyrights
(Revised to January 1, 1978)

Chapter 1—Registration of Copyrights

11. Exclusive rights in a copyrighted work.
12. Rights of author or proprietor of unpublished work.
13. Protection of component parts of work copyrighted; separate works or portions.
14. All writings of author included.
15. Registration of prima and labels.
16. Classification of works for registration.
17. Copyright not to be limited to works in public domain or published prior to July 1, 1909, and not already copyrighted, or Government publications; publication by Government of copyrighted material.
18. Authors or proprietors, assisted; aliases.
19. Publication of work with notice.
20. Registration of claim and issuance of certificate.
21. Works not required for sale.
22. Deposit of copies after publication; action or proceeding for infringement.
23. Name; failure to deposit; deposit; penalty.
24. Name; publisher's name; transmission by mail without cost.
25. Mechanical work to be done in United States.
26. Effect on assignment system.
27. Making false statement.
28. Notice form.

Copyright Act of 1976, 17 USC § 107: Fair Use Provisions

§ 107. Limitations on exclusive rights: Fair use⁽¹⁾

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

(www.copyright.gov/title17/92chap1.html#107)

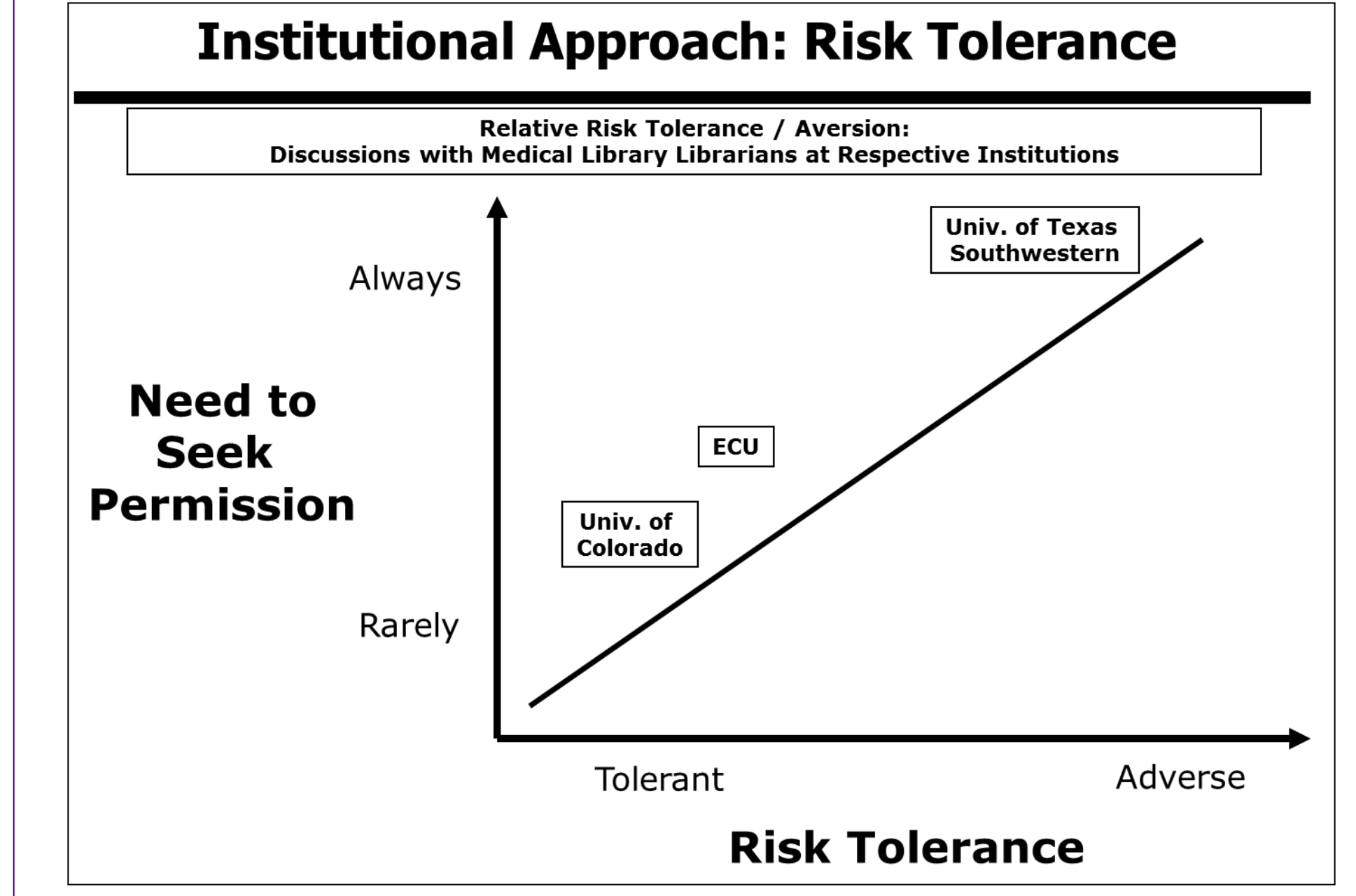
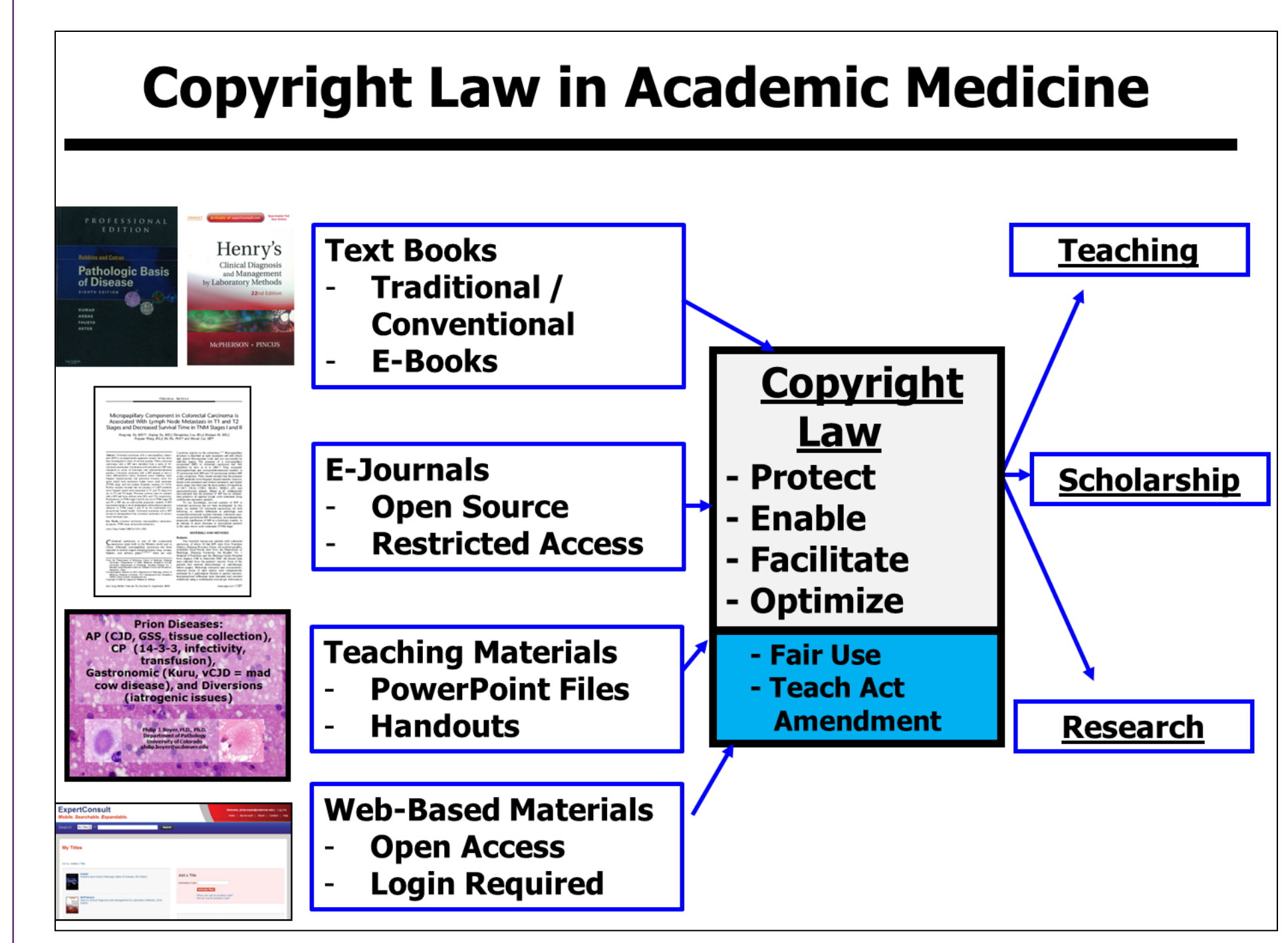
Amendment to Section 110(2) of Copyright Law: 2002 Technology, Education, and Copyright Harmonization Act = “TEACH ACT”

Online / Distance Education (TEACH Act) vs. Face-to-Face Education (Fair Use Provisions) (overlap with storage of materials on servers; recording of lectures)

Copyright Defined

“Copyright” literally means the **right to copy**... The owner of copyright has the exclusive right to reproduce, distribute, and, in the case of certain works, publicly perform or display the work; to prepare derivative works; in the case of sound recordings, to perform the work publicly by means of a digital audio transmission; or to license others to engage in the same acts under specific terms and conditions.

(www.copyright.gov/circs/circ1a.html)



“Four”-Factor Fair Use Test - 17 US Code 107(1-4)

“In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include”

Test	→ Fair Use	May Be Fair Use	→ Get Permission or License
1. Character of Use	- Non-profit - Educational - Criticism - Commentary - “Transformative” use	- Mixed (e.g. transformative and commercial)	- Commercial
2. Nature of Work	- Factual - Published	- Mixture of fact and imaginative	- Imaginative - Unpublished
3. Amount of work used*	- Small Amount - “Reasonable and limited portion”	- Moderate amount	- Large amount
4. Effect on market for the original work if use is widespread	- First 3 factors tipping toward fair use - No lost sales - Promotes larger work - Original is out of print or otherwise unavailable - No ready resource to ask permission - Copyright owner unidentifiable	- Mix – first 3 factors in favor of fair use, but payment mechanism is well established	- Competes with or reduces sales of original work - Avoids payment for permission (royalties) in an established permissions market
Addendum: Dissemination	- Intranet		- Internet

* Factor 3 Clarification Re. Use of Book Content: – Allowable Based on Georgia State University Case
- Book = 10 Chapters or More: 1 chapter / - Book < 10 Chapters: 10%

Four Stack Copyright Analysis

Material In Question	Examples	How to Proceed
1. Materials authored by participating faculty members	- PowerPoint files from talks - Word documents from articles - PDFs of published articles - Tables from text books	- Free to use - Provide acknowledgment / citation
2. Materials already licensed	- PDF from licensed journal - Diagram from textbook - Chapter from textbook - Materials from licensed Web resources	- Free to use - Provide acknowledgment / citation
3. Materials available from the Web for free - Implied license - Expressed license	- Text - Images - Other content (whole slides)	- Free to use - Provide acknowledgment / citation
4. Materials for which there is no license and not freely available off of Web site	- Article from journal not licensed by University - Charts/tables of uncertain origin	- 4 Factor Fair Use Test - Ask permission: Author / publisher - Can use while permission is being sought - Provide acknowledgment / citation

- #### The Fine Print: Fair Use and Licensing
- License Rights**
 - Libraries negotiate for access to materials for use by patrons – hard-copy and electronic
 - Journals
 - Books
 - Databases
 - Assumptions**
 - The library has paid to provide every single student and faculty member on the campus access to and use of the journal content
 - With electronic links – students and faculty members have an easier time finding resources to which they already have rights
 - Similar reasoning is applied regarding implied licensing in the purchase of and use of content from a textbook – hard copy or electronic
 - A combination of **fair use** and **implied license** (e.g. in the case of the articles available on publisher's Web sites) will cover educational activities

- #### University of Colorado Medical Campus Library
- Collections Budget: ~\$2,000,000 annually**
 - UC Provost's Office / State: 60-65%
 - Remainder: 35-40%
 - Hospital Contract
 - Student Fee
 - GME Office
 - Collections Personnel**
 - 1 FTE
 - Distribution of Funds for 2013-2014**
 - Print / AV Resources: ~\$20,000 – 30,000
 - Electronic Resources: the rest
 - Journals
 - E-Books
 - Databases
 - Vendors / Publishers**
 - ~90 – 100 total
 - Major publishers – multiple journals and e-books
 - Not-For-Profit specialty societies
 - For profit publishers
 - Negotiations: Lots
 - Some on own
 - Some with consortia
 - Library
 - Purchasing
 - Legal
 - Who's Covered: Contracts Negotiated for:**
 - All UC Anschutz Medical Campus
 - Faculty
 - Staff
 - Students (pay tuition, enrolled)
 - Some
 - Person physically in the buildings / on campus
- (Melissa De Santus, MLIS, AHIP – UC Anschutz Medical Campus)

Use Cases and Citations in PowerPoint Slides

Table and Diagram from Textbook Resources and Citations (red arrows)

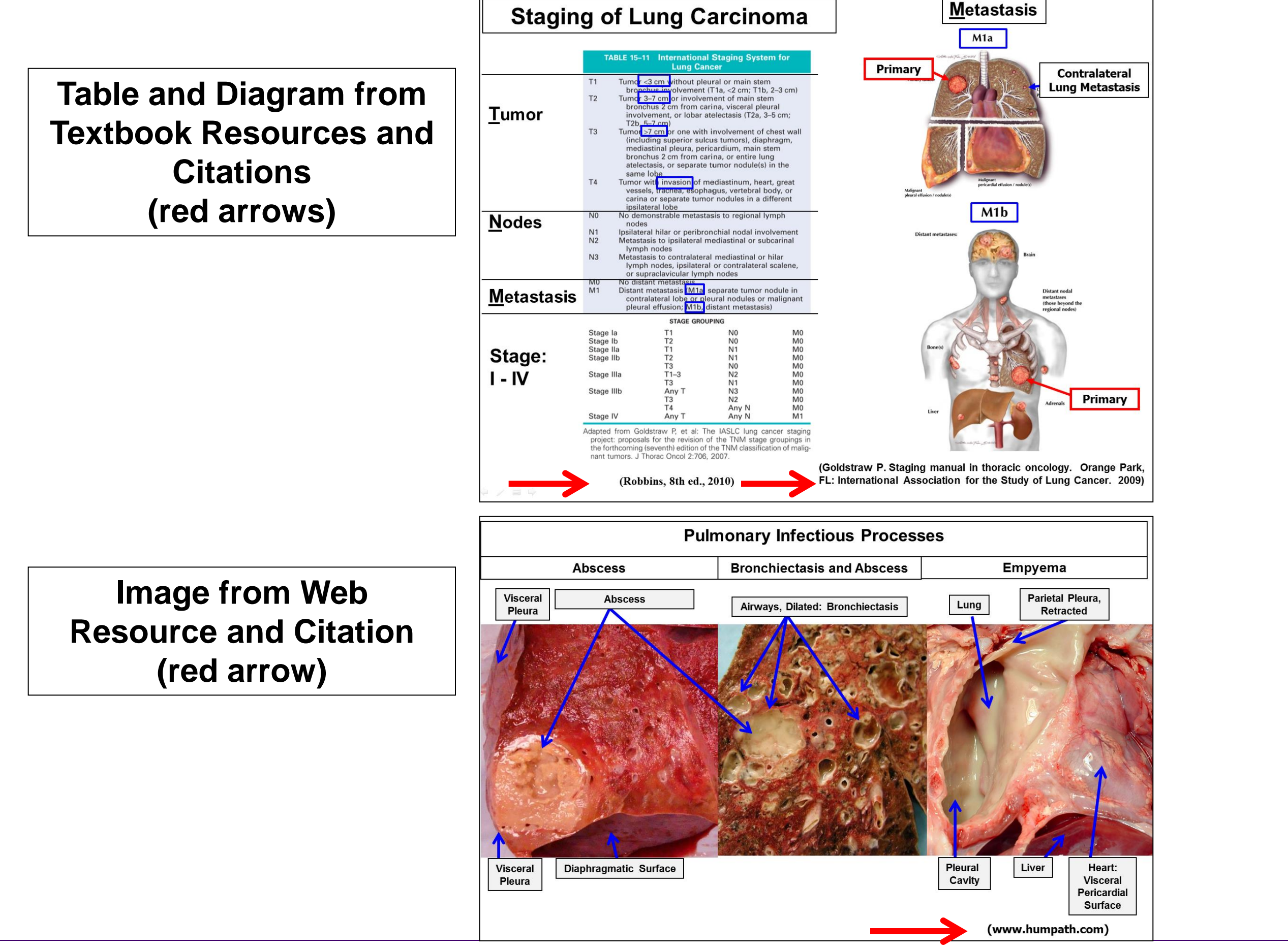
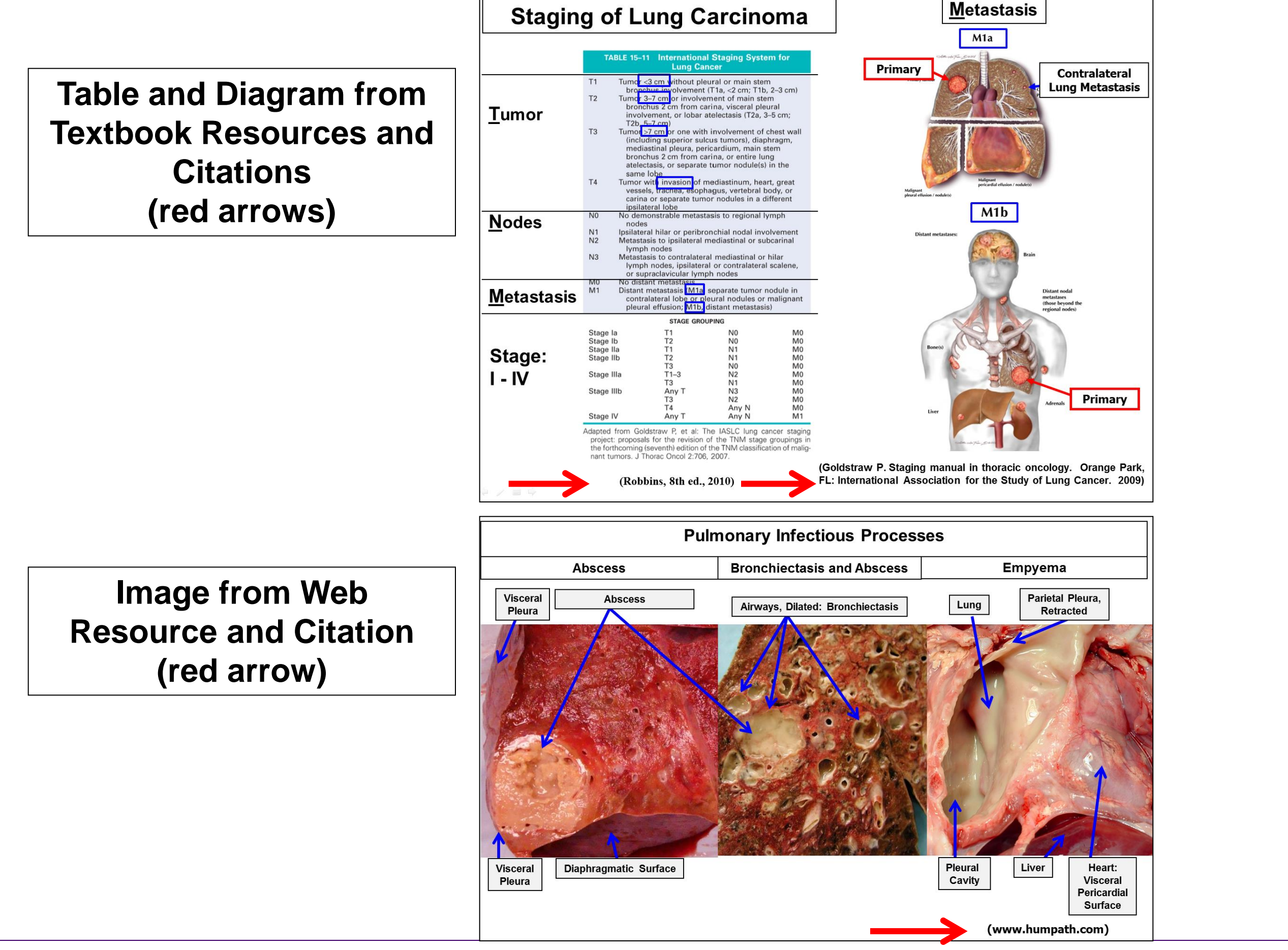


Image from Web Resource and Citation (red arrow)



Conclusions

- An ever-expanding wealth of reference materials is available in an electronic format
- “Fair use” criteria are incorporated into the United States Copyright law and should both guide and facilitate decisions about the utilization of copyrighted materials in the medical education setting.
- Fair use strictures explicitly allow for the use of copyrighted content (e.g. a diagram or image from a textbook, a medical journal, or an on-line resource) to which students and trainees often already have “fair use” access rights.
 - Specific copyrighted images / figures / tables can be used for PowerPoint files & Compilations and can be made accessible to meet defined educational course goals
 - AND
 - Comply with licensing, fair use, and TEACH act restrictions
- The four-factor fair use tests provide a mechanism to assess materials so that
 - Useful materials can be made available to audience for whom the licence was negotiated (ECU (and Vidant) Faculty, Students, and Residents)
 - Providing ready access to a small part of a bigger work
 - Key Issue: **Access limited** to defined user group by Intranet login
 - Availability: limited time (e.g. during specific classes or during residency)
 - AND
 - Authors' rights are respected and contributions acknowledged
- Pragmatic and optimal to uniformly give credit where credit is due AND cite Copyright law
 - Include author, source, and other attribution material whenever known
 - Copyright Notice: “The materials on the course Web site contain copyrighted material and are solely for the use of students enrolled in this course for purposes associated with the course and may not be further disseminated.”
- If using material outside of “Licensed” audience:
 - Apply fair use tests
- Pragmatic to interpret rules conservatively and seek permission if “fair use” rights are hazy and author / publisher is known (and alive) and easily queried
 - Can use materials while seeking permission
 - Institutions would be well served to have established individuals who seek permission in a uniform and documented manner

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Collaborators: Fair Use Project

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University of Texas At Austin
Austin, TX
Georgia K. Harper, J.D.

UC DENVER
(ucdenver.edu)

University of Colorado Denver, CO
B.K. DeMasters, M.D.
Gregory Kotnis, M.D.
Yao Schmidt, M.D.
Patrick Mann, M.D.

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(clevelandclinic.org)

Cleveland Clinic Cleveland, OH
Walter Henricks, M.D.