What do these have in common?

- The Mona Lisa
- The Starr report
- What I am saying
- Your idea for a web page
- The Guggenheim Museum of Art

- The Mona Lewinsky
- Your (draft) article
- What you are writing
- Your web page
- This:
Copyright Requirements

• Original
  – not copied + a minimal degree of creativity

• Work of authorship
  – including not only literary, but also musical, dramatic, choreographic, pictorial, graphic, sculptural, audiovisual, and architectural works

• Fixed in a tangible medium of expression
  – embodiment is sufficiently permanent to permit it to be perceived for a period of more than transitory duration
• Notice and registration are *not* required to obtain copyright
• Neither is publication
• Copyright attaches *automatically* upon creation
• But notice and registration do provide certain advantages
Which means that . . .

• Pretty much everything is copyrighted
  – Including not only your books and articles, but also your drafts, your syllabi, your exams, your web pages, your letters and e-mail messages to your friends, and even the notes you are taking (and doodles you are drawing) right now
  – And also including other people’s books and articles, drafts, syllabi, exams, . . . that you want to incorporate into your own works
  – And even including students’ works
Copyright v. Plagiarism

• Copyright protects only the expression, not the underlying facts or ideas
  – Copying someone else’s facts or ideas may be plagiarism (or patent infringement or . . .), but it’s not copyright infringement

• Crediting the source is not a defense to copyright infringement
  – Not crediting the source is plagiarism
Exclusive Rights of Copyright Owners

• Reproduction of the work in whole or in part
• Preparation of derivative works
  – *e.g.*, translations, musical arrangements, dramatizations, sound recordings, and second editions
• Distribution of copies of the work to the public by sale, gift, rental, loan, or other transfer
  – limited by the “First Sale Doctrine”
• Public performance of the work
• Public display of the work
  – also limited by the “First Sale Doctrine”
Permissions and Transfers

• The exclusive rights are both independent of each other and individually divisible
• License: permission to exercise one or more of the exclusive rights in specified ways
• Transfer: assignment of ownership of one or more of the exclusive rights
• Transfers and exclusive licenses must be in writing
UCITA

- Generally validates “shrinkwrap” and “clickwrap” licenses
- Contract law can trump copyright law
  - Could eliminate fair use, first sale, . . .
Who *is* the owner?

- The creator is the owner
  - If two or more persons jointly create a work, they are joint owners with joint rights
    - It’s best to decide and spell out beforehand who may exercise those rights and how
    - Otherwise, they may each do so independently
- Except for “works made for hire”
  - Except for certain faculty works . . .
A Typical Copyright Policy

• Faculty ordinarily retain copyright in their scholarly and artistic works, unless created:
  – as part of a sponsored program subject to specific obligations to another party, \textit{or}
  – with more than insignificant use of University facilities, resources, or equipment, \textit{or}
  – pursuant to a special assignment

• Works by students \textit{as} students are their own
  – Works by students \textit{as} employees are works for hire
Copyright in Cyberspace: The Dilemma

• The Internet is really just a big photocopier:
  – You can’t view a web page without making copies of it
  – You can’t read a Usenet message without making copies of it
  – You can’t forward an e-mail message without making and distributing copies of it

• So is it all copyright infringement?
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• So is it all copyright infringement?

It depends!
It’s not infringement if . . .

• You are the copyright owner
• There is a specific statutory exception
• You have express permission
• You have an implied license
• The work you are using is in the public domain
• What you are doing is “fair use”
§ 110: Classroom Use

• Notwithstanding the provisions of section 106, the following are not infringements of copyright:

(1) performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made.
§ 110: Distance Education

• Notwithstanding the provisions of section 106, the following are not infringements of copyright:

(2) performance of a nondramatic literary or musical work or display of a work, by or in the course of a transmission, if (A) the performance or display is a regular part of the systematic instructional activities of . . . a nonprofit educational institution; and (B) the performance or display is directly related and of material assistance to the teaching content of the transmission; and (C) the transmission is made primarily for (i) reception in classrooms or similar places normally devoted to instruction . . . .
TEACH Your Children Well

• Technology, Education, and Copyright Harmonization Act of 2001 (S.B. 487)
• Would amend § 110(2) to facilitate asynchronous, web-based distance education and the use of a significantly broader range of works
• Would require “reasonably effective” technological protection measures
Fair Use Factors

• Purpose and character of the use
  – personal/educational/transformative v. commercial

• Nature of the work being used
  – factual v. creative

• Amount and substantiality of the portion used in relation to the whole
  – small v. large, both quantitatively and qualitatively

• Effect on the market for the original
  – not of your individual use, but of the *type* of use
Classroom Guidelines

- Multiple copies (not to exceed in any event more than one copy per student in a course) may be made by or for the faculty giving the course for classroom use or discussion, provided that:
  - A. The copying meets the tests of brevity and spontaneity; \textit{and}
  - B. Meets the cumulative effect test; \textit{and}
  - C. Each copy includes a copyright notice; \textit{and}
  - D. No charge is made beyond cost of copying
Still CONFUUsed?

• *Proposed* Fair Use Guidelines for:
  – Distance Learning
  – Educational Multimedia
  – Electronic Reserve Systems
  – Digital Image Collections

• Never adopted, but a good starting point for fair use analysis

• http://www.uspto.gov/web/offices/dcom/olia/confu