

[00:00:00] Bonni Stachowiak: Today on episode number 411 of the *Teaching In Higher Ed* Podcast, Tom Tobin is back, this time to talk about copyright for the rest of us.

[00:00:13] Podcast Production: Produced by Innovate Learning, maximizing human potential.

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[00:00:22] Bonni: Welcome to this episode of *Teaching In Higher Ed*. I'm Bonni Stachowiak, and this is the space where we explore the art and science of being more effective at facilitating learning. We also share ways to improve our productivity approaches so we can have more peace in our lives, and be even more present for our students. Tom has joined me earlier than many of our guests do because I'm interested in a little bit more than his BioShares. Tom is with me. Welcome back to *Teaching In Higher Ed*, Tom.

[00:01:03] Thomas Tobin: Thank you very much, Bonni. Pleasure to be back on the show with you.

[00:01:06] Bonni: I'm going to start reading your bio, but I'm going to stop when I have questions. Thomas J. Tobin, PhD. I think most people know that's a doctorate, but these next ones, I'd love to have you share. We've got MSLS, PMP, MOT, CPACC, what can you tell us about that part of your bio?

[00:01:28] Thomas: It tells you that I'm a giant nerd. I was a 28-year-old kid with a doctorate, and I didn't actually know how to do my laundry all that well at that point. I went back into higher education, and went and got a second master's degree, that MSLS is master of science in library and information science. I tell my nieces and nephews that I am in the 44th grade, because I haven't actually stopped with the formal getting of credentials and things like that. The PMP, that's project management professional.

I spent seven years in industry in the middle of my career, and they said, "Yes, you have a PhD. That's great. Do you know how to manage projects?" They helped me to study up for and maintain that certification as well. MOT, master

online teacher certification from the University of Illinois Springfield's ION program, Illinois Online Network, and CPACC, certified professional in accessibility core competencies from the IAAP, International Association of Accessibility Professionals.

That just means that I know what I'm talking about when it comes to the laws around accessibility and disability rights, and I just last year finished the academic leadership academy at Penn State, in case you're counting. I'm grateful to share a little bit of that journey with all your listeners, but we're here to talk about copyright, and I want to start with my disclaimer. I am not a lawyer, and nothing you're going to hear in this episode is intended to be legal advice or a substitute for legal advice. That being said, I know my stuff, so let's continue.

[00:03:09] Bonni: Oh, thank you so much, and I cannot tell you how delighted I am that I decided to ask you to hear me read your bio, because I just learned so much. You're also a founding member of the Center for Teaching, Learning and Mentoring at the University of Wisconsin, Madison. You also have written a number of books, and I'll just share about those, and they'll be linked in the show notes as well. *Evaluating Online Teaching: Implementing Best Practices*, *The Copyright Ninja*, which we are going to speak about today. *Reach Everyone, Teach Everyone: Universal Design for Learning in Higher Education*, you were a co-author on that book in 2018, and I'll be linking to the past episode where we got to talk a bit about that book.

Going Alt-Ac: A Guide to Alternative Academic Careers (2020), and *UDL for FET Practitioners: Guidance for Implementing Universal Design for Learning in Irish Further Education and Training (2021)*.

[00:04:11] Thomas: You can tell that last one is a government publication because the title is like 18,000 characters.

[laughter]

[00:04:18] Bonni: Well, wonderful. I'm going to share just briefly with you, I'm sure this is a story you've heard before, Tom, and that is that early in my teaching career, I really only used to ever hear about copyright with a very legalistic communication style, and a fear-based one. "Don't you dare ever do this. Don't do this, don't do that," and I still hear a lot of echoes in higher education around those things, the shaming and the guilt, and all of that, and that's important for us to know about it.

We don't want to endanger ourselves, and, of course, we don't want to endanger our institutions, but I'd love to hear before we get into some of those things we should be cautious about, I'd love to have you inspire us a little bit,

and talk about, what are some things that are happening out there today that are inspiring you? I get really inspired by the idea of remixing things, or the unique ways that people are sharing things, and how they are using some of these, both rules as well as norms in their teaching. What's inspiring you today?

[00:05:27] Thomas: I've got a couple of different ways to start off with you. One of them is to look at the work of people who are in the legal field who are essentially trying to pull the rug out from under the other serious scholars out there. One of them is Brian Frye, F-R-Y-E, and he has been an advocate for plagiarism as a norm. He's been saying, "I'm going to do this legal scholarship, and here it is for free, and the first person to put their name on it and get it published in a legal journal, have at it," and his work really has inspired me to start thinking about the concept of ownership, and it might be a good place for us to start, and when we're thinking about the listeners who are going to be hearing this episode as well.

The challenge for us in higher education, it used to be that nobody cared whether you made a bunch of copies, or put things into your prof pack. I'm going back into the 1980s and '90s here where an instructor would copy a chapter out of a book from the library, and hand it over to the printing area of the college or university, and then there would be a spiral bound packet of all the readings for your course.

At least nominally, somebody should have been checking that I had permission to make those copies, but there was this understanding that I'm an academic, and therefore, a lot of what I do falls under fair use, or I have some academic exemption to make copies for my students. That's true 50% of it, maybe, but the golden days of copyright were back before the internet. When if you made copies, A, even if you weren't following the letter of the law, nobody was likely to find out, and B, even if somebody did take you to task on it, there were very clear guidelines for what you do with copies that you make for different kinds of academic purposes.

Fast forward to today though, and especially after the pandemic, when suddenly we all started thinking about not only, how are we using material when we're making copies of things that other people have created, but the flip side of the coin, and this is the thing that I'm really excited about in my work lately, is, who owns what I make? Who owns my lecture notes, the syllabus, the bullet points on PowerPoint that I don't really want to do anymore, but who owns that? Is it my institution? Is it me? Do we own it together?

That's a question that maybe we'll explore later on in our conversation, but one of the challenges that is really productive for me is that, when we're thinking about remixes, or sharing things under open licenses, or giving up our copyrights

so that other people can do cool things with them, that's really exciting. There's the MSCHF collective, M-S-C-H-F, and they are a group of academics who try to push the boundaries of what copyright will allow us to actually create and do. For example, they recognize that Mickey Mouse is probably going to go out of copyright in 2024, if there isn't another extension to copyright, and they are selling a little gold coin with an image of Mickey Mouse on it, but they can't call it Mickey Mouse yet, so they say, "Famous mouse coin."

In 2024, they will license that to you if and only if there hasn't been an extension to the copyright. There's also a lot of people working in multimedia studies who are doing remixes of audio, mashups of different things, parodies of famous works. There's a lot of different ways that we can use content and make copies of content that other people own in academic ways, but it's never been simple, it's never been clear, and most of the guidance that we've heard from the grapevine, the 10% rule, don't use more than 10% of piece of content when you make a copy, or the one chapter rule, no more than one chapter out of a book, no more than one verse of a song.

None of that is actually grounded in what the law does or doesn't allow you to do, and a lot of those rules of thumb actually get in the way, and they're more restrictive than making an informed decision. A lot of things that we could make copies of, or when we create content and share it with other people, we could give it to them under certain licensing terms or permission terms. If we're operating under those rules of thumb that we all know, we're missing out on opportunities to do a lot more with materials and content than we otherwise might.

[00:10:49] Bonni: Oh, it's so interesting to have you talk a little bit about the history. I happened to be in college in exactly the time that you were talking about right before the internet, especially before it went to be more of a graphical user interface and more accessible to people, but I can recall those course packets, you described them perfectly as far as that went. So, if I think about that, that's how so many people grew up. It kind of leads us now to talking about some common misunderstandings, because everything you've just talked about with regard to how some of us may have obtained our materials as a college student, or, some people may have been assigning those things and creating those booklets back then.

Then maybe we would've gotten some of these rules of thumb and not really understood that part. What are some of the more common misunderstandings that you're finding that we faculty will tend to have about copyright?

[00:11:42] Thomas: Well, it's all also not just instructors. It's a lot of folks in instructional design. Usually, our librarians are more on point about how things

actually go, because they work with licenses, and permission, and copyright every day. In the classroom though, I hear a lot of really loose and really tight misunderstandings. The really loose misunderstandings, "I am an academic, I can copy whatever I want. Fair use done." All right.

The challenge with that one is, "fair use", you've heard that term, I imagine, listeners. Back in the day in the 1790s when the United States was a very young country, Thomas Jefferson and James Madison put together the very first copyright laws for the new nation. They were based on laws in Britain, and in France, and other countries. The ones that came up for the United States though, they enshrined a new right, and it was called Fair Use.

This was really a right that only applied to priests and professors. If I were a priest and I wanted to copy a document, and put it into the pews of my church, and give every person in my congregation a copy of an essay that someone had written, I didn't need to ask the author of the essay for permission, I could just go and have the copies made. Same thing with professors.

In the United States, Harvard was a one room college, and it was training people to become priests, and the professors there, if they wanted their students to read a particular book, they could have copies of that book made without paying any money for the rights, or asking permission to make the copies at all. Fast forward several decades, and we get to 1976, that's when in the United States Congress, that right, and, of course, along the way, the priests dropped out, and the professors, that got expanded to anybody who wanted to make copies, but in 1976, it switched from being a right, "I can make these copies and I don't have to ask anyone," to a legal defense.

Meaning, for every instance of fair use that people are claiming, "I want to make this copy of something that somebody else owns," every time you have to go through a quick double-check on four different factors. Listeners, you might have heard about the pane, P-A-N-E factors, purpose, amount, nature of the work, economic impact. Each of those decisions now becomes not a yes or no, but it becomes like a slider. You can make a poor case for each of these four things, a case that's kind of, eh, a case that's really strong, anywhere in between.

Who decides where that slider falls? Well, a judge, if you're not lucky, but most of the time it's you so that that loose, I can use anything. The reality is, every single time you make a copy of something, and you want to claim fair use for academic purposes or a newspaper criticism, parody, there's a bunch of different protected categories, but, usually, for teaching, learning and scholarship, those are the ones that we are concerned with. Every time you make a copy, you have to go through that whole thought process.

If I'm making the copy for the purpose of teaching, learning or scholarship, and you can make a strong case there, an iffy case or a poor case. Just because you made a copy, and just because you're an academic doesn't mean it's for an academic purpose. You're advertising a lecture, and you have an image that you want to use on that flyer, that's not technically for a teaching purpose, that's advertising. There are a lot of things that we do with copies in higher education that aren't themselves actually teaching or learning.

The amount of the work, here's another common misunderstanding, you've heard about the 10% rule. Don't use more than 10% of a whole thing and you'll be fine. It's actually not in the law anywhere, and it's not a defensible way of thinking. What the copyright law in the United States, and in Canada, to say, is that fair use, if you're one of our Canadian listeners, fair dealing is the same concepts, very close to it. Then the amount is, you're using as much of the original content as you need to, but not more, and you can say why you copied only that much. It's possible to make a strong fair use argument, or fair dealing argument, and say, "I used half of this, and here's why I need to use half of it."

You can see that there aren't really yes and no, or bright lines that you say, "Oh, yes, that's definitely fair use," or, "That's not fair use." Nature of the work, this one's where a lot of people get tripped up. If the original thing that you're copying is more factual than creative, if it's already been published so you wouldn't be depriving the person who owns it of the right to publish it first by making the copy, those argue for a stronger case under nature of the work.

For nature of the work, does that mean that we can't make copies of plays, and music, and other creative endeavors? No, we do have to have a strong case for it though. We have to make a strong argument. The last one is the one that lots of judges look at first, E-P-A-N-E economic impact. This is, "Will your making a copy deprive the owner of the opportunity to make a buck off of the copy," or, "Are you making the copy so that other people don't have to buy the thing that it already is in?"

A lot of the copying that professors used to do in their prof packs, ooh, that's a really poor economic impact argument. When you're thinking about that fair use argument, if you've made a copy of something, and you want to post that copy in your learning management system, you want to put it on a flyer, anything that you put into a fixed format, that's when you need to start thinking about, "Can I make that fair use or fair dealing argument?"

That's something that not a lot of people know about yet, and it's also something that gets you a little bit down the road toward having to become kind of a mini lawyer yourself. The challenge is, any reasonable person should be able to make a good fair use argument when they make copies of things. But we've been fed

these simplistic, "Don't do" kinds of things that, Bonni, I loved when you were framing our initial conversation, that we hear about what you can't do rather than what you can, and that's the other side of the coin when we think about common misconceptions about copyright.

People can tend to think, we talked about that loose idea of, "Oh, I can make a copy of anything." The other side of that coin is people thinking about how they can't make a copy of anything because they don't want to run a foul of the law. People end up not thinking through that fair use conversation because they just don't make copies of anything because they know then they'll be fine, and they'll be on the right side of things. But that precludes lots of cool possibilities that people can actually do if you know a little tiny bit about fair use, and we'll talk about licenses, and permissions, and other things later on in our conversation.

That's the one big thing, listeners, to take away right now, is, if you're making a copy, and you put that copy into your content for your course, or it's for some other academic reason, engage in that fair use argument. Now, who's going to check you? Probably nobody. At the same time, if you can make a strong fair use argument in all four of those purpose, amount, nature of the work, economic impact. If you're in Canada, there's two more, there's characteristics of the work and alternatives available. If you can make a strong argument in each of those categories, you should be pretty comfortable with the copying that you're doing.

[00:20:11] Bonni: You've given us a history that takes us back to the 1700s, and then we doubled a little in the 1900s. I have even found that since this show first aired in June of 2014, some changes happening. I got educated a lot more about Creative Commons licenses by attending some various open education conferences across a few years and all of that. I was so much as sponge, I still probably would consider myself to be a sponge as opposed to pouring into other people on these topics.

For example, this podcast, as people are listening to it right now, is openly licensed. It is a type of Creative Commons license where people can share it, but I do have a type of license that says without it being commercial benefit. Yes, that's partially to protect myself, but it is also candidly partially to still want to be able to have guests like Tom Tobin come on and talk to me. I still distinctly remember a very early guest, someone who has been around these kinds of things for quite a bit longer than me, that Steven Brookfield.

I remember, he was the first person to ever say, "Of course, I would love to come on your podcast. I want to make sure you would never charge for this. You would never charge for the interview I'm about to provide you with," and I

thought, "I've learned so much," but the reason I bring this up, Tom, is that, some of the same people that I've learned from, so if you were to go look at my website and look in the footer, it would have that Creative Commons license. I still do. I think it's probably tucked away so hard that people still will contact me and ask if they could use a part of it.

Other people who I greatly admire in these spaces have changed their mind. They're the ones who are saying, "Openly license everything, Creative Commons go all the way." In fact, some of those people were even saying we shouldn't have any restrictions. Like, I shouldn't even have the part about not having a commercial benefit, and yet today, I've not had any conversations with them, nor am I likely to do that anytime soon, but I just notice some people evolving their thinking.

I wonder if you'd share a little bit now. I think you were about to maybe share a little bit about licenses, but perhaps also with the front of those of us you were talking about, "What do we own?" I'm talking about really two different things, what do I own if I'm producing it for my institution, if it's a PowerPoint slide deck, or what have you, and then, what do I own, or should own, or that kind of thing, if I'm blogging or podcasting, or that kind of thing.

[00:22:45] Thomas: Oh, excellent question, and let's take it in two parts, and I have a question for you to start us off, if you don't mind. When's the last time you installed software? Like an app on your phone, or software on your computer, do you remember the last time?

[00:23:00] Bonni: It would've probably been just days ago, yes.

[00:23:03] Thomas: Oh, awesome. It's recent memory. What did it say when you installed the software, and then you had that big, long, end user license agreement that you obviously scrolled through, paid attention to all of it, and read to all the different pieces before you hit, "I agree." What did it say in that license agreement?

[00:23:23] Bonni: Do I agree to this license? Do I accept?

[00:23:25] Thomas: Oh, yes. You didn't actually read all of that legal use text, and don't feel bad. I don't either, and neither do our listeners. This is one of the reasons why copyright has become this boogiemaniac for us, is that it used to be that if you wanted to share the work that you had created in a way that was different from the base protections that copyright law provides to you, you had to have a team of lawyers, and they would create a big, 14-page document that was the end user license agreement, and you would have to read through

it with a fine tooth comb to make sure that the lawyers weren't asking for like your firstborn, and your house, and your kidney when you hit, "I agree."

Flash forward to 2009, and Cable Green and the folks at the Creative Commons Foundation, they got a team of lawyers together and said, "What would happen if we created a bunch of licenses that allowed people at a human readable level to share their work, give up some, all or none of their rights under copyright, and we would have the 14 pages of legal language behind these human readable licenses?" If you go to creativecommons.org, listeners, you'll find the four different main flavors of Creative Commons licenses. This gets us a little bit further into the nuance of understanding how copyright works.

Here's something that you may not have ever heard before. The law is the last resort. In other words, copyright law applies to the intellectual property. Anything that you think of, put into a fixed format, whether that's your diary at home, or you left a voicemail for somebody, that automatically has copyright to it, as soon as you put it into a fixed format. The law actually applies only when there is no other permission or license in place. Weirdly enough, we've been obsessing over copyright law, but copyright law actually applies only to a small subset of the content that people can own.

Most of the interactions that people have around content, and copies, and things like that have to do with permission and licenses. Bonni, you mentioned the Creative Commons license under which you share the episodes of the podcast. Creative Commons licenses allow you as a creator of content to say, "I want to share this with the world, and I want to retain most of my rights, but I want to give up a few of them too." You have the right to say to people, "Don't copy my stuff at all." People would have to come to you and ask for permission to make a copy of one of these episodes.

One of those Creative Commons licenses is a NC, non-commercial license. Meaning, Bonni says, "I retain all my rights under copyright, but in this case, you have my permission to make a copy of this episode so long as you're not actually charging people for that copy. There's a buy or attribution license for Creative Commons. "Go ahead and make a copy of what I have created, but when you make the copy, say to other people that I made it." There's a non-derivative license, or ND, "Go ahead and make a copy of my content, but don't take my lovely color web image and turn it black and white, or crop out just the detail of it. You got to use the whole thing." Then share or like Creative Commons Licenses SA, meaning, "Go ahead and make the copy, but don't put the copy into something that is more restrictive copyright wise than my license."

I'm sharing something that I created like a piece of artwork, or a poem, or a webpage, anything that's in a fixed format. Then you're going to take my

content and put it into your commercial package that you're selling that's behind a username and a password. That share or like means, "Don't be more restrictive than me when you make a copy of my content." Listeners, you can mix and match all four of those. The attribution, the non-derivative, the non-commercial, the share or like Creative Commons licenses.

You can give up some, all or none of your copyright rights under the law. There's also Creative Commons Zero license, which means you give up all your rights. I just go ahead and make copies. You don't have to say it was me. You don't have to ask me for permission. You don't have to do a darn thing. Just, this is freely given, and I'm going to give up all my rights to it. That's one piece of what you asked about. I want to pause here and see if it's coming up with any ideas that are sparking for you, or a follow on question, and then we'll dive into who owns what you do when you're teaching.

[00:28:44] Bonni: The only thing I was going to say is that as you went through the four types, the mix and match, I'm so glad that you clarified that because, I only expressed one aspect of how I decide to creatively license something, and that is the part about non-commercial. For anyone who's interested, I do also ask for the attribution back to the show. Of course, it's nice when you're putting all this work, and also time and money into a project like this.

It is nice to have people point back to it so we can get more listeners. Thank you for sharing just about these different aspects of the licensing. I just wondered, Tom, if you've heard anything about why some people out there that are in a similar space as me, maybe they're a big blog or writer, podcaster, that have changed it. Why would they maybe have gone back to copyright, which is to say, I'm curious if you've had conversations with other people in similar spaces.

[00:29:37] Tom: Absolutely, and one of the challenges really is, for many folks, a podcast is actually part of their business. If it's really part of your hustle, and you want to bring folks in on a subscription model, I'm thinking of colleagues who have substack blogs. In some cases, you can go to somebody's substack blog and see their content for free, they're not charging for it. There's no subscription model for it, and they usually will share their work under some kind of Creative Commons licensing. For those folks who are writing for substack and they're trying to monetize it, they're trying to make a living off of their substack blogs, then all rights reserved is the way to go.

All rights reserved means, "If you want to make a copy of this, come ask me permission," and when we said the law was at the very end of the chain there, you've got the law, and then you've got licenses, and you've also got permission. If Bonni, you went to all rights reserved tomorrow for the podcast, I don't think you're going to do it, but let's for the sake of argument, and I wanted

to make a copy of one of your episodes, and use it for whatever purpose, I would need to contact you and say, "May I make this copy in this way, for this audience, during this time period, and put all the parameters of how I want to make the copy?" Then you could say, "Yes, I give you that permission, and then I'm golden."

Copyright law doesn't even actually touch that, if I've got permission to do what I want to do, and I have that email from you, or a letter from you, off I go. But, you can also come back and say, "You're asking for a lot. I'd like to give up some of my rights here, but also retain others," and that permission could say, "You can make the copy, but you gotta take it down after six months," or, "You can make the copy, but you've got to pay me a royalty fee."

All rights reserved is a way to protect the original kinds of rights that copyright usually affords people, and that is to protect the work that you do when it's put into a fixed format so that you can, in the words of our friend, Thomas Jefferson, reap the material and economic benefits thereof. That's a little bit of a side note, but it also is a nice segue into who owns what, and this might be the part of the show where we blow a few listeners' minds. The law in the United States, this is true in Canada, this is true in the United Kingdom, this is true in former Commonwealth countries, and it's also true in lots and lots of worldwide countries.

If you are an employee, and you create materials content, you put something into a fixed format at the direction of your boss, or on work time as part of your work, your employer owns it. That's it, there you go done. There's the law. The problem comes in, and that's called work for hire. We've hired you to do the work, either piecemeal, or you're a regular employee for us, and everything that you produce as an employee on employee time, with employee resources, the organization, the institution owns it, lock stock and barrel, you do not have an ownership stake in that content.

The problem comes in when we think about higher education especially, because there is a tradition. Note, I did not say a law, there is a tradition of saying to instructors and faculty members, "The content that you create for your courses, we will recognize that you own that," and this is also a good place in the conversation to say, we're still talking about copyright. We are not talking about trademarks, patents, and other forms of intellectual property. If you're thinking about scientists at your university who have to negotiate who owns a patent because their lab came up with some new process or new technique, that's very different.

What we're talking about is ideas or information that's been put into a fixed format. That's copyright, and because there's that tradition of allowing faculty

members to own their own stuff, and because until very recently, nobody cared who owned what because it wasn't put into a fixed place where somebody could get at it again, right. During the pandemic, we all shifted to good enough emergency remote instruction, which meant that for the first time, all of us, not just the instructors who were teaching online and chose to do that, but all of us had to put syllabi, notes, documents, content into a learning management system or someplace where our students could get at it remotely.

Also, suddenly, all of us started creating recordings of the interactions that we were doing live, or there was some kind of trail that the institution now owned a copy of the materials that we created or produced. We've got this tradition of instructors owning it, but for the rest of us in higher education, the librarians, the support staffers, we're all work for hire. If I'm a tenure-line faculty member, and I'm working with two contingent adjunct folks in my department, and a media services person, and the librarian, and we collectively create materials for a course that everyone in the department can teach from, who owns those materials? Good question, right?

Some of the people who had a hand in creating that content, totally work for hire, some people who had a hand in creating that content, tradition of ownership falling to the instructor. Where there is no guidance in terms of policy for a college or a university that work for hire law obtains at the end of the day. If you're on company time, and you're using company equipment to do company things, the university or the college owns it. Now, let's dial this back. A lot of colleges and universities have recognized that there is that tradition, and there's that gap between the tradition and what the law says at its core way, and so, a lot of colleges and universities have been creating intellectual property ownership policies.

I'd encourage you listeners, take a look at your college or university intellectual property section. Chances are, it will talk about patents, and people in science labs, and things like that, it will probably not talk about the materials that you create as an instructor or a support staffer. If it doesn't, talk with your university or college lawyer, talk with your administrators, talk with your faculty senate folks, get policy in writing, because that's the only way that you've got a guarantee about who owns what that is different from the copyright law.

Let's do one other twist though on this, and that all sounded straightforward and easy to understand. Let's twist it one more way. You notice I've been careful to say, "Content that you create on company time, at the request of the institution, with university or college resources." What happens if you're working from home, you're on your own computer, it's after work hours, and you create something to

teach from, who owns that? There are three categories to think about, first, content that's created without substantial, technical or financial support.

If you are a scholar, and you're creating course materials for a course that you want to teach down the road, and you're doing it in the evening time, it's not on time that your college or university would ask you to be in your office and doing things for them, and you're using your own laptop, your own internet access, all that stuff, then the intellectual property rights will devolve to you, right? You created it, you own it, and then if the university wants to create a copy of it, they would then have to talk to you about licensing or some other kind of agreement.

Content created without substantial technical or financial support, and you're doing it not because somebody asked you to, but because you want to create that material, that's yours, you own it. Category two, content created as work for hire. If this is on work hours with the work equipment and somebody asked you to do that work, yes, the institution owns that, lock, stock and barrel. That's actually a really clear-cut case.

This is true, even if it's a bunch of people collaborating, remember the instructor, and the contingent folks, and the media services person, and the designer, if a number of people have created a collaborative thing, and most of them are under work for hire, work for hire is going to launch in there as well. It's the third category where we get a little wiggle room to think and do, and that is content that's created with substantial technical or financial support. If you're a faculty member, and you get a grant for some release time, and on that release time, you're making materials and content, you should have an agreement in place that says who owns it, because there isn't a clear cut you own this or the institution owns it.

The institution and the faculty creator will typically grant each other what's called a royalty-free license for future use. You retain the right independently to make derivative works, or take your work elsewhere and use it somewhere else, and then the institution would also retain a right to make copies of that, and use it for other purposes or make changes to it, assign it to some else perhaps to do more development work with it. I suppose the lesson to take away here is, this is why when you ask your campus lawyer all these copyright questions, their response is inevitably, "It depends," right? Even when we've got some really clear understandings like, "Here's how to make a fair use argument." That's pretty clear, but then, who says which of those sliders goes where, that's not clear. When we think about licenses, like Creative Commons licenses, what kinds of rights do you want to retain? What kinds of rights do you want to give up? Those are individual choices.

It's a clear concept, and then the application gets muddy. Then, when we think about who owns what, especially when we're thinking about content that we've created, if it's straight work for hire, simple, if it's straight you're using your own material on your own time, simple. In between, we probably should have a conversation. Those are the kinds of things that really led me to want to give people a simpler, not make you a lawyer version of what we just talked about, and that's the comic book called the *Copyright Ninja*.

[00:41:17] Bonni: Before I get to the recommendations segment and share a little bit more about today's recommendation, which happens to be one of Tom's books, I want to first thank today's sponsor, and that is the 2022 Distance Teaching and Learning Conference. It's being held August 3rd through the 5th, it is a virtual event, and I can encourage you to head on over to the link that will be in the show notes to learn more about the event, and to register. I will be one of the invited speakers, there are some fantastic keynote and other invited speakers.

The keynotes will be Sarah Rose Cavanagh, Chris Gilliard. I'm so excited about not only getting to present at the conference, but also be able to continue to learn from both of their work, and I'm going to share just a few of the invited speakers, Tracy Addy, who's a prior guest of *Teaching In Higher Ed*, Susan Bloom, also a prior *Teaching In Higher Ed* guest, Jessamine Newhouse, also a prior *Teaching In Higher Ed* guest, Rebecca Pope Roark. You're starting to see a pattern here. I've just listed some of the invited speakers there are. It's just a tremendous event.

I had a great honor of being able to be included in last year's conference as well, and just very much encourage you to head over to that website to go check out the information about the 2022 Distance Teaching and Learning Conference, and thanks to them again for this partnership that allows me to share about the conference, and also allows me to bring a colleague along to be able to learn from everything that will be happening at this year's event.

Well, I'm cracking up right now because, this is normally the time in the show where we switch to the recommendations, which I'm actually going to do, but it's because I would like to, as my recommendation today, recommend your book that you're holding in your hand and flipping through. Would you share a little bit about one of the people that you write about in the book, Bill Ullswater, and a little bit about the connection with martial arts?

[00:43:23] Tom: Absolutely. First, why is this a comic book? The challenge for me was, I knew a little bit about copyright, and not enough to write a giant legal treatise, and since I'm not a lawyer, no one would publish that anyway. What I want to do is give academics, whether you're an instructor, an instructional

designer, a librarian, an administrator, give you just enough information about fair use and fair dealing, licenses and permission from a lay person's perspective to give them confidence that they could make informed decisions about using copies that they had made, and also guarding their own copyrights, or giving up their copyrights in a way that was useful for them.

Why is this a comic book? Well, I'm not a lawyer. I don't have enough information about copyright to make a giant textbook out of it, and no one would publish that or read that textbook as it is. I want to tell the story of a campus lawyer, Bill Ullswater, in this comic book. He goes to his martial arts practice, and he hears about, nindō, the way of the ninja, which is secretly serving some cause or other people. The Japanese language is really a wonderful language, because nindō means way of the Ninja. It means way of peace. It means way of patience, or it means the way of the flow. A lot of concepts in Japanese can be expressed in different ways. You say the syllable the same, but the kanji character is different.

In the comic book, I thought, wouldn't it be funny if the campus lawyer was wrestling with copyright questions like lots of us ask our campus lawyers, and he had to say, "It depends, it depends, it depends," until he goes to his martial arts practice and hears about this secret way of serving some noble cause. He looks down and he says, "I have this martial arts uniform, and I have a ski mask in the car. I could do this." He pretends to be a superhero. He has to deliver some materials to one of the people without him being seen.

He has to get past the night janitor, and the barking dogs, and will he get caught? Will his friends reveal his secret? Read to find out, and along the way, you learn more about fair use, fair dealing, licenses and permission. I was very grateful to connect with the folks at Freestyle Komics. Michael Watson is the anchor on this one. He and his team do comic books, and various other graphic arts kinds of things in the Detroit, Michigan area, and fantastic and talented team who did the inks on this one, and I was very grateful to have a comic book that helped you not become a mini lawyer, but just have enough that you knew what you were talking about.

[00:46:28] Bonni: I'm so grateful for your work, and grateful for this book specifically, and I also know that you may have something to recommend today as well before we close.

[00:46:36] Tom: Yes, absolutely. If you are into copyright, and you want to learn more, one of the places that you can go is the TILT, Texas Information Literacy Tutorial. These are our librarians from our Texas University System. It is a fantastic way for you and your students to understand intellectual property and copyright

in a way that is simple, has takeaways that you can actually use, and is also robust enough that if you have specific questions, you can dive deeper into it, but that Texas Information Literacy Tutorial is a wonderful stopping point on your journey when you're thinking about copyright and intellectual property.

[00:47:22] Bonni: Well, Tom, what a delight to get to reconnect with you again today. I still remember how nervous I was the first time to talk to you, and this morning, there was only the nerves that comes from the excitement about knowing this topic is so important, and wanting to do it justice, but no more of the nerves of not knowing you. What a wonderful delight to get to connect with you today, but so often through Twitter, and through other means, and just thank you so much for being a guest again on Teaching In Higher Ed.

[00:47:48] Tom: Absolutely. It's a pleasure coming back, and I hope that our listeners will get some value out of our conversation today, and I'd love to hear, listeners, when you implement some of the things we talked about. You can find me on Twitter @ThomasJTobin, and you can come to my website at thomasjtobin.com if you'd like to continue the conversation as well. Bonni, thank you so much for having me on the program again. I'm looking forward to hearing the next episodes that you record with more guests.

[music]

[00:48:20] Bonni: Thanks once again to Tom Tobin for joining me for today's episode, and also to the 2022 Distance Teaching and Learning Conference for your partnership on today's episode. Today's episode was produced by me, Bonni Stachowiak, and was edited by the ever talented, Andrew Kroger. Podcast production support was provided by Sierra Smith, a phenomenal educator who just happens to have time to engage in this side gig for us here at innovate learning, and these podcast episodes are just one of the Teaching In Higher Ed resources. If you'd like to receive our weekly email updates, I encourage you to subscribe at teachinginhighered.com/subscribe, and thanks so much for listening. I'll see you next time.

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