#1 HYPOTHETICAL:
You have “right click-saved” (aka “snatched”) some photographs and illustrations from various web sites, and you wish to use them in a PowerPoint presentation for an upcoming class.

ANALYSIS:
A. Would this use of the images be a fair use?
B. Would it be different if your presentation were to be published on the iPad U site or in the printed in a hand-out?
C. What if it is a student’s project?

- Purpose: Educational presentation, nonprofit use
- Nature: Scholarly
- Amount: Entire image.
- Effect: A classroom PowerPoint presentation is likely to have little effect on market for original work. Conversely, if published or posted on the web, the perceived market-effect could be significant. The presentation software may have restrictions for commercial use.
- Good or Bad? Good. You are just educating the students...

Conclusions:
A. PowerPoint use in a classroom is a fair use.
B. If published on the iPad site or in printed hand-outs, permission will likely be required from all the copyright holders prior to use. Get permission from students for any potential use by others outside of Lynn.

Bad facts:
Some of the websites used were textbooks that you formerly used.
You copied all the images from one site.
You stole the entire Power Point presentation.
You use the same materials every year.
Students sometimes cheat- black & white nature of ©
#2 HYPOTHETICAL:
You have access to a collection of unpublished papers by fellow academic. You wish to reproduce some of the papers in a course textbook you’re preparing.

ANALYSIS:
A. Would this be a fair use?
B. What if the unpublished letters are from a famous author – say “Richard Wright”
C. Would the outcome be different if JD Salanger wrote the papers? (Risk discussion)

A. Trick ANALYSIS; threshold analysis is that the papers have likely entered the public domain; therefore, a fair use analysis is unnecessary. As a general rule of thumb, if the work was published before 1923, you can typically assume it’s in the public domain (life of author + 70 years).

B. Assuming the papers were instead written by a notoriously private author such as JD Salanger, and are not in the public domain:

Conclusions:
- Purpose: Publication for scholarly use
- Nature: Unpublished works generally afforded more protection than published works. Copyright holder has chosen not to publish work; ask whether these exact quotes or paraphrasing.
- Amount: Depends upon how the papers content is used in the article – limited to excerpts, or the entire paper(s)? If excerpts, are they the critical elements of the paper(s)? Courts have even looked at number of words taken relative to the total number contained in the article.
- Effect: Could have significant effect on potential market, more so if author is famous.
- Good or Bad? Wright vs. Salanger.

Bad facts: You asked for permission, and they either did not get back to you or worse, declined. You are afraid to ask because you are pretty sure they will decline. Worse, you wrote about that fear in an e-mail.
You are trying to be provocative, not educational.
#3 HYPOTHETICAL:
You have a collection of slides you have been gathering for some time. You have obtained these slides by: a) copying them from books; b) purchasing them directly from publishers; c) taking the slides yourself on J-Term trips; and d) copying slides owned by professorial colleagues. Your grad student wishes to reproduce some of these slides in her dissertation.

ANALYSIS:
A. Would this be a fair use?
B. Would the outcome be different if you were to build an iPad course using these images?

- **Purpose**: Scholarly work, but if dissertation is available commercially, might not matter. For example, if the dissertation is included in a subscription-based database of dissertations, permission may be needed.
- **Nature**: When was photograph taken and who took the photos? It may have fallen into the public domain. Is the photo artistic or creative?
- **Amount**: Entire work.
- **Effect**: Limited market for dissertation; unlikely to compete with owner’s market for slides.
- **Good or Bad?**: If truly good faith, and educational OK. If lazy, no.

Conclusion:
A. Publication in a dissertation would probably qualify as a fair use.
B. If you are building an iPad book with these images, there is a much stronger case for arguing that fair use does not apply, because the effect would be much broader and more likely to usurp the market for the copyright owner. Your permission for use of the slides is only applicable to those slides for which you are the copyright holder. What if this publicity is good for the copyright owner? Example, the copyright owner is a great talent but undiscovered? (“They will LOVE for this to get out”) Neither obviates the need to secure permission, and in fact should make it easier to get permission from owner.

Bad facts: Some of the work is “famous” and used for that fact.
Any editorializing/viewpoints that they © would disagree with?
#4 HYPOTHETICAL:
You wrote an article that was published in a journal of education last year. The journal publisher wants to compile the article in a book format and asked for (and received –b/c you didn’t show the agreement to your GC) exclusive rights to the article. You still have the document in a word processing format, and you want to post the original manuscript on your personal web site so that your colleagues at other Institutions can comment on it.

ANALYSIS:
Would distributing your article in this way be an infringement of copyright?
In negotiating with the journal publisher, you gave up your right to distribute the work.

- Purpose: nonprofit use, academic research and collaboration
- Nature: creative, published work
- Amount: entire work, or a significant portion if the journal itself is considered the entire work.
- Effect: impairment of market for the copyrighted work? Could be argued that if journal is scholarly, limited audience, how much does journal subscription cost?
- Good or Bad?

Conclusion: Although technically you have violated copyright by publishing your manuscript online, few publishers would actually enforce the copyright. BUT ANYWAY – ASK the GC if you are given an agreement. (President Ross did so, and negotiated rights he wanted)
#5 HYPOTHETICAL:
You’ve authored a lab text in which you would like to include a few classic experiments “right-clicked”
directly from a copyrighted textbook that you used to use in your classwork, but don’t anymore. You will
be adding lots of your own notes about procedures. Your University President has talked about putting
these texts on the iPad for an iPad course.

ANALYSIS:
Would it be okay to use these experiments in your lab manual without permission?
• Purpose: commercial publication.
• Nature: May be factual rather than creative. Lists, steps in a “common procedure”, etc. are not
  subject to copyright. However, the analysis differs if there are creative elements to the
  experiments.
• Amount: Depends – are these experiments central to the textbook?
• Effect: You may be competing with the market of the copyrighted textbook. Court will ask what
  the effect is on the publisher of the textbook that you copied from.
• Good or Bad? Baaaaaad

Conclusion: ?
#6 HYPOTHETICAL:
You teach a large survey course. You have often used a commercially produced course, containing text, images and video that your students will study in detail as part of their coursework. You wish to digitize portions of the course and make it available on the streaming server through the iPad so that the students have ready access to it. They are not required to purchase any other materials for the class.

ANALYSIS:
Would this be a fair use?
- Purpose: Educational use; restricted access
- Nature: Highly creative; use is not transformative in any way since copying large amounts of the commercial course and not making any changes to the content. Compare, if using limited excerpts and very brief clips and decide if use is transformative
- Amount: Large portions of the work – and its commercially produced and marketed
- Effect: Significant impact on the market
- Good or Bad?
Conclusion: Not fair use.
#7 HYPOTHETICAL:
You teach the Dialogues class, and you often post detailed lecture notes. These are your notes, but they are partially based on a former colleague’s lectures who had previously taught a similar course. You are approached by a commercial venture (soontobeformerlynnprof.com) to sell the notes for an iPad course, which they intend to post on the web for national distribution.

ANALYSIS:
Would soontobeformerlynnprof.com be infringing copyright? If so, whose?
Who owns the copyright to the lecture notes? Current instructor or the original professor?

If you are speaking from prepared notes that were partially and originally created by former instructor then they are subject to copyright protection.

- Purpose: Commercial use
- Nature: Unpublished, creative works
- Amount: Lecture notes from all of professor’s class?
- Effect: Does this significantly impair a potential market? For example, could the former professor have been planning to write a book based on content from his lectures?
- Good or Bad?
Conclusion: Not fair use on
# 8 HYPOTHETICAL:
Your students are AMAZING. Well, some of them are. You want to include their PresentationPoint™ Presentations in your class. You have been asked to put an iPad course together. What about including those student materials?

ANALYSIS:
Who owns the copyright to student’s work? Can we use PresentationPoint in an IPad book? What is contained in those PresentationPoints that might be subject to protection (images, music)? Who owns a student’s work?

- Purpose: Educational
- Nature: Very creative
- Amount: Entire work
- Effect: Insignificant if use is limited.
- Good or Bad?

Conclusion: Fair Use for classroom, not for iPad.
# 9 HYPOTHETICAL:
You have created a database that compiles the results of several surveys of Lynn students’ responses to various questions. You wish to use this material for a professional paper to be delivered at FAU.

ANALYSIS:
Are there any copyright concerns related to this project?
Data itself is not protected by copyright. The survey instrument (say, a questionnaire) might be. If the survey was written with some degree of originality, they would likely be protected by copyright.

- Purpose: Research
- Nature: Mostly factual information, creativity in arrangement or content?
- Amount: Entire work
- Effect: Insignificant if use is limited
- Good or Bad?

Conclusion: Fair Use.