



Copyright Overview

This Copyright Overview is targeted primarily at digital content distribution over the Internet, not at physical classroom distribution of content. As legal advice must be tailored to the specifics of each case, we recommend that you consult your legal counsel for advice on your particular situation.

This document provides a general overview of some issues under U.S. copyright law, including public domain, fair use, the TEACH Act, and copyright licensing. This overview also provides a brief discussion of some issues you may want to consider when creating a policy on copyright compliance.

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Copyright Basics

In the United States, copyright law protects authors who create original work, including creative, expressive, and intellectual works. Works that can be copyrighted include:

- Literary works
- Musical works, including any words or lyrics
- Dramatic works, including any music
- Choreographic works (as long as they have been notated)
- Pictures, graphics, and sculpture
- Movies and other audiovisual pieces
- Sound recordings
- Architecture

These categories can be considered very broadly. A computer program can be registered as a literary work; a map can be registered as a pictorial work.

Current U.S. copyright law protects both published and unpublished works. The moment a qualifying work is created in a tangible form (written down, recorded, or captured electronically), that creative work is automatically protected by copyright.

The copyright owner has the exclusive right to reproduce, modify, publicly display, publicly perform, and distribute their original works. If others want to do any of these things, they have to get permission from the copyright owner.

Check the U.S. Copyright website at <http://www.copyright.gov/circs/circ1.html> for more information on copyright basics.

Keep the following in mind when creating or using educational works:

- Copyright protection generally attaches to all educational materials you create, so you need to think about how to manage your copyright.
- When you come across a creative work, assume it is protected by copyright.

Copyright on the Internet

Copyright law protects almost all written content, images, audiovisual recordings, and other content posted on the Internet, even if the original works do not include a copyright attribution.

College or university students and faculty could under certain circumstances distribute and download educational material via the Internet if that material meets one of the following criteria:

- You are the copyright owner or creator of the content.
- The copyright owner of the content has granted permission for digital distribution.
- The content is in the public domain.
- Use of the content is "fair use."
- The content is licensed.

The section, "Using Content," later in this document, provides details about each of these criteria.

Getting Permission

If you incorporate someone else's work into your materials, you will need the permission of the person who owns copyright in that material. This applies to any type of copyright-protected work such as images, video, music, software, and text.

Once you use the work verbatim (in part or in whole) or altered, you implicate copyright law.

Before you use any copyrighted works in your educational materials, you must identify the copyright owners and ask for permission to include their work in your materials. You can identify who the copyright owner is by checking for a copyright notice (usually in the form of "© [year] [name]"), or you can ask the person who made the work available for this information.

For works created in the United States, you can also search the U.S. Copyright Office's register available at <http://www.copyright.gov/records/>.

Do You Need to Get Permission If You Cite the Source?

Some people think you can use someone else's work if you acknowledge the original creator or source. But this will not protect you against a claim of infringement. Always get permission from the copyright owner before using any copyright-protected material.

Creating Content

As soon as you create original content in a fixed or tangible form (such as writing it down, recording it, or otherwise capturing it), that content is protected by copyright in the U.S. Copyright owners decide how someone else can use their work. For example, the copyright owner could decide if someone else can make a copy, distribute it, change it, or perform it in public.

The copyright in content developed by faculty and staff may belong to the university or to the faculty or staff member. The issue of ownership will generally hinge on the contractual arrangement between the university and the faculty or staff member. In connection with any content generated by faculty or staff, it is your responsibility to know whether the individual employee or the university is the copyright owner.

Another party might become the copyright owner of your creative work if you sign an agreement transferring the copyright ownership. If you no longer have the rights to your work, you cannot incorporate it into any new materials you create.

Including Audio in Your Materials

If you want to include preexisting audio recordings in your materials, keep in mind that there are generally multiple levels of copyrights. Even minor reproduction or arrangements require the permission of the copyright owner. To use an audio recording created by someone else, make sure you have permission to use all copyrights. Check the copyright circular on sound recordings at <http://www.copyright.gov/circs/circ56.html> for more information.

Including Interviews

If you interview someone for your materials, there might be two different owners of copyright in one interview—you and the person you are interviewing.

The person you interview owns copyright to his or her verbatim responses. As the interviewer, you own copyright to your questions, any commentary on the interview, and any organization and arrangement of interview responses.

As an interviewer, you need to make sure the person you interview agrees to the interview and your use of the responses, and allows you to include the responses in your materials and to distribute your materials.

Licensing Your Work

When you create content, think about licensing it to give others the right to use your work according to the terms you choose without asking for permission. See "Licensing" later in this document.

Using Content

You might be able to use the work created by someone else when you:

- Determine that the material you want to use is not protected by copyright (including works in the public domain)
- Make "fair use" of the work
- Follow the requirements under the TEACH Act
- Use material under a content license (such as Creative Commons) that authorizes your intended use
- Obtain permission from the copyright holder

The following sections touch upon the various ways you may be able to use content in each of these circumstances.

Using Materials Not Protected by Copyright

Certain materials are not protected by copyright and you might be able to use them freely without obtaining permission.

Using Ideas, Theories, and Facts

Copyright law does not protect ideas or theories, but it does protect the creative expression of an idea or theory. For example, a play written about a death caused by the greed of two sisters is protected, but the underlying idea of two greedy sisters causing a death is probably not protectable. If ideas were protected, there wouldn't be much creation of new work.

Generally speaking, copyright law does not protect facts; facts are generally in the public domain. For example, an author might spend years researching Egyptian artifacts and discover a new burial ritual in doing so. When the research is published, someone else can likely use the facts from the research to describe the burial ritual in their own way. See the U.S. Copyright website for more information at <http://www.copyright.gov/circs/circ31.html>.

Using Titles and Short Phrases

Some titles and short phrases are considered common idioms of the English language and cannot be copyrighted. Phrases like "Read my lips" may be free for anyone to use. More information can be found at <http://www.copyright.gov/circs/circ34.html>.

Using Materials in the Public Domain

Copyright laws do not protect creative works that are in the "public domain." No one owns these works and anyone can use them.

Creative works become part of the public domain when:

- The copyright has expired.
- The copyright owner did not renew the copyright.
- The copyright owner designates the work as public domain.

More information on works in the public domain can be found at <http://www.copyright.gov/pr/pdomain.html>.

Making Fair Use of Someone Else's Work

The U.S. Copyright Act provides the following list of some uses of copyrighted work that may qualify as "fair use": criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research. If a work falls within fair use, it may not be necessary to obtain permission from the copyright owner. Four factors used to determine whether a particular use is "fair" are:

- What is the purpose and character of the use?
Is it for commercial purposes or nonprofit educational purposes?

- What is the nature of the copyrighted work?
Is the work factual in nature (scholarly, technical, scientific, and so on) or is it a creative expression, such as a work of fiction, a poem, or an image?
- How much of the work is being used (as compared to the whole work)?
The larger the amount you use, the less likely it will be considered a fair use.
- Does the use affect the commercial value of the work?
If the use would negatively impact the market for or value of the copyrighted work, this factor would weigh against fair use.

Determining whether a use is "fair" is difficult and rarely clear-cut. The safest approach is to obtain permission from the copyright owner.

For more information on fair use, see <http://www.copyright.gov/fls/fl102.html>.

What Is the TEACH Act?

The TEACH Act (Technology, Education and Copyright Harmonization Act) covers using copyright-protected materials in distance education. The TEACH Act builds upon the fair use guidelines to address the digital environment and redefines how qualifying educational institutions can use copyright-protected materials in distance education.

Complying with the TEACH Act offers additional benefits for educational institutions when using copyright-protected materials. For more information on the TEACH Act, see http://www.copyright.iupui.edu/dist_learning.htm.

Licensing

You may use or allow others to use copyrighted content pursuant to a content license. Here are a few examples of existing licensing schemes used in some academic environments that apply primarily to content. It is advisable to obtain legal advice before using one of these licenses for your own content, or using someone else's content released under any of these licenses, so that you fully understand what is and is not allowed with respect to the content.

Creative Commons

Creative Commons is a nonprofit organization that offers alternative licensing. Offering your work under a Creative Commons license does not mean giving up your copyright. It means offering some of your rights to any member of the public on certain conditions.

There are four conditions that you can choose to apply to a Creative Commons license:

- **Attribution:** Allows copying, distributing, displaying, and performing of copyrighted work—and derivative works based upon it—but only if the copyright owner is given credit.
- **Noncommercial:** Allows copying, distributing, displaying, and performing of copyrighted work—and derivative works based upon it—but for noncommercial purposes only.
- **No derivative works:** Allows copying, distributing, displaying, and performing of copyrighted work but only without altering or transforming it beyond the provisions of fair use.
- **Share alike:** Allows others to transform a work as long as the resulting work is available on the same terms as the original work.

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Open Publication License

The Open Publication License is a license used for creating free and open publications created by the Open Content Project. The license is generally focused at academics; however, some artists have found it suitable to their tastes. This is now largely defunct, and its creator suggests that new projects not use it.

Developing an Academic Copyright Policy

A copyright policy summarizes the copyright compliance procedures at your institution. Having a policy in place provides a central resource for copyright issues and may help comply with the TEACH Act requirements.

Your institution might consider developing an overall campus policy on copyright compliance that covers the basic issues, as well as a policy for faculty and another policy for students.

Campus Copyright Policy

Consider the following topics when developing your campus-wide copyright compliance policy:

- Purpose of the policy
- Overview of copyright
- What is protected by copyright
- Rules for using copyrighted materials

Identify when permission is necessary for each type of work and type of use. Include a discussion of fair use, the institution's position on fair use, the criteria and guidelines for conducting a fair use analysis, and examples. Include use of textbooks, video, film, sound recordings, computer software, photographs, musical scores, coursepacks, websites, Internet postings, and other literary and creative works.

- When and how to obtain permission
- How to report suspected infringements

Faculty Policy

Your faculty policy might cover the following:

- **Ownership of content created at your institution**
Identify and define who owns any content prepared at your university, how these works might be used, and what the process and criteria are for releasing these works. Discuss content made-for-hire, content created by students, content resulting from campus research, and content created by faculty and staff.
- **Explanation of fair use and other educational uses (such as the TEACH Act)**
Discuss photocopying, digitizing, displaying, and transmitting printed materials.
- **Any licensing agreements your university might have for digital works**

Student Policy

Your student policy might cover the following:

- **Ownership of content created at your institution**
Identify and define who owns any content prepared at your university, how these works might be used, and what the process and criteria are for releasing these works. Discuss content made-for-hire, content created by students, and content resulting from campus research.
- **Explanation of fair use and other educational uses (such as the TEACH Act)**
Cover photocopying, posting and downloading content, copying software, and peer-to-peer file sharing.