# Copyright

## Introduction to Copyright

Copyright is the law of the United States that protects the works of authors, artists, composers, and other creators from being used without permission. Authors and other creators are granted a limited set of exclusive rights to copy, distribute, sell and perform their works. The law attempts to balance the private interests of copyright owners with the public interest and is intended, in the words of the Constitution:

"...to promote the Progress of Science and useful Arts, by securing for a limited Time to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." (U.S. Constitution, Article 1, Section 8)

Many of the law’s provisions are limited in certain circumstances and the educational setting is one of the most complex. It is also subject to broad interpretation.

### Exclusive Rights of Copyright Owners

[Section 106](http://www.copyright.gov/title17/92chap1.html#106) of the [Copyright Act](http://www.copyright.gov/title17/92chap1.html) gives the copyright owner the right to do and to authorize others to do the following:

* To reproduce the work in copies or recordings;
* To prepare derivative works based upon the work;
* To distribute copies or sound recordings of the work to the public by sale, rent, or lease.
* To display or perform the work publicly. This includes the individual images of a motion picture or other audiovisual work.
* In the case of sound recordings, to perform the work publicly by means of a digital audio transmission

### Types of Works Protected by Copyright

Copyrightable works include the following categories. Reproduction of these works, whether by copying or performing publicly, is what is covered by copyright law.

* literary works;
* musical works, including any accompanying words;
* dramatic works, including any accompanying music;
* pantomimes and choreographic works;
* pictorial, graphic, and sculptural works;
* motion pictures and other audiovisual works;
* sound recordings; and
* architectural works.

### Works Not Protected by Copyright

Works in the public domain are works that are not protected by copyright law. **This means that the work may be freely used and adapted by others** without a license fee or permission from the creator of the work. If a work is in the public domain, anyone may reproduce and distribute the work, create derivative works, and display or perform the work publicly.

Some works are not subject to copyright law. None of the following is subject to copyright protection:

* Works that have not been fixed in a tangible form of expression (performances that have not been written or recorded, for example);
* Titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of lettering, or coloring; listings of ingredients or contents;
* Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, (Ideas and inventions are the subject matter for patents, while the expression of ideas is governed by copyright law);
* Works consisting entirely of information that is common property and containing no original authorship (e.g., standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources);
* Works created by the U.S. federal government; Works prepared by an officer or employee of the United States government as part of his or her official duties are not protected by copyright law. Read USA.gov’s [Copyright and Other Rights Pertaining to U.S. Government Works](http://www.usa.gov/copyright.shtml) for details and exceptions. Note in particular that works of state and local governments are not subject to this status and may be protected by copyright.
* Works published prior to 1923, (copyright has expired)
* Works where the creator has placed the work into the public domain or allows re-use based on a Creative Commons license.

### Length of Copyright Term and the Public Domain

#### *Copyright* **Protection Expiration**

Copyright protection expires after a certain period of time, as set by federal copyright law. Determining what works have expired copyrights, and therefore are in the public domain, can be a complicated process due to changes in the copyright laws over the years. The length of copyright protection period depends on several factors, including when the work was created, whether it has been published, and if so, how and where it was published. Two general rules with respect to copyright expiration are. It is important to note that

while public domain works are free of copyright restrictions, you must provide appropriate citations to your sources for academic integrity.

* + Works published before 1923 are in the public domain
  + Works created today will be protected for the life of the author + 70 years

### Using the work of others

In scholarly writing, you will often use someone else's work to add context to or support for your arguments. Often, these will be quotations from other authors, but you might also use art, photographs, images, music, or video. Under the principles of copyright law, these works are likely to be protected by copyright law, and the right to copy and distribute the work belongs exclusively to the copyright holder. Fortunately, there are exceptions to the copyright law which, under specified circumstances, allow the use of copyrighted works without explicit permission from the copyright holder. If none of those exceptions apply, however, you will need to request permission from the copyright holder before using his or her work.

### Exceptions to Copyright

While the copyright owner has exclusive rights, these rights are not unlimited. These exceptions are set out in the [Copyright Act](http://www.copyright.gov/title17/92chap1.html). One exception to this exclusive right is called "[the fair use exception](http://www.copyright.gov/fls/fl102.html)."

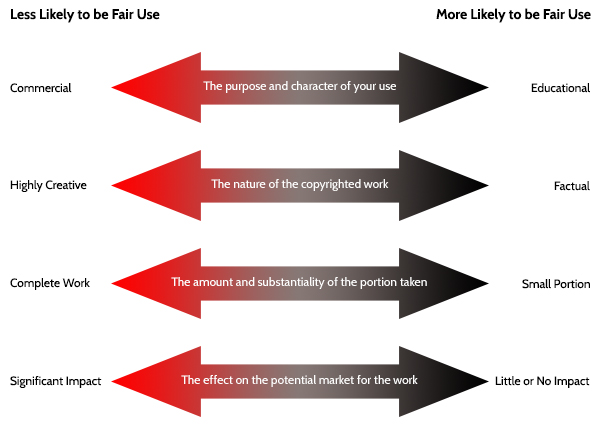
**The fair use exception permits the reproduction of a portion of a copyrighted work without the copyright owner's permission, under certain circumstances**.

This is a vitally important exception for education, as it enables students, scholars, and critics to use and reference copyrighted works in their own scholarship, teaching, and critiques.

There is no one right answer as to what constitutes a fair use of a particular copyrighted work. The answer varies from situation to situation. Fair use is a "rule of reason," and because there is no universally adopted definition of fair use, the interpretation of how much use constitutes fair use is a matter of much debate. There is no one right answer as to what constitutes a fair use of a particular copyrighted work.

The following **four factors** are involved in determining all fair use decisions:

* ***Purpose and character of the use*** - nonprofit educational uses, like research, teaching, and scholarship are generally favored under fair use analysis
* ***Nature* *of the copyrighted work*** – using material from primarily factual works is more likely to be considered fair use than using material from highly creative works
* ***Amount and substantiality of the portion used*** - using small portions from a copyrighted work is more likely to be considered fair use than using a larger portion of the work; there should be a clear connection between the instructor’s pedagogical purpose and the amount of materials used
* ***Effect of the use upon the potential market for or value of the copyrighted work*** -  uses that do not affect the market for the copyrighted work are more likely to be considered fair



(Fair use graphic from Georgetown University Library)

Fair use attempts to balance the needs of teachers and researchers with those of copyright owners. The fair use doctrine allows for certain uses of copyrighted works, without permission or payment, for purposes such as criticism, comment, news reporting, teaching (including, in some instances, multiple copies for classroom use), scholarship, or research.

### ****What are the Limits of Fair Use?****

Unfortunately, the law and subsequent court cases do not provide a lot of guidance on which uses are fair and which are infringing. There is no formula, percentage, or amount of a work that is automatically deemed to be fair use. Fair use determinations are made by evaluating what type of work you are using, how much of it you are using, and how you are using it. Fair use analysis is always done on a case-by-case basis and is subjective and fact specific. To determine whether a use is fair or not, the four factors must be weighed and balanced. All of the factors must be evaluated, although the relative importance of individual factors will vary from case to case. Rights holders and users of copyrighted materials do not always agree on whether a use is fair, so conflicts can arise, and a particular use could be challenged by the copyright holder.

This Fair Use Evaluator might be useful, but should not be considered legal advice:

### [Fair Use Evaluator](http://librarycopyright.net/resources/fairuse/)

### TEACH Act

Section 110 (2) TEACH Act – The Technology Education and Copyright Harmonization Act is an important 2002 revision to section 110 of the [Copyright Act](http://www.copyright.gov/title17/92chap1.html) that ensures that new technology-based education (e.g., distance education via electronic networks) may apply the principles and provisions of fair use in the curriculum.

It expands the scope of educators' rights to perform and display works and to make the copies integral to such for digital distance education, making the rights closer to those we have in face-to-face teaching.  If a specific use of a copyright-protected work does not fit within the TEACH Act, the use of the work may fall within Fair Use. Otherwise, permission to use the work must be obtained from the copyright owner.

The TEACH Act covers works an instructor would show or play during class such as movie or music clips, images of artworks in an art history class, or a poetry reading. The rights granted DO NOT extend to the use of:

1. works primarily produced or marketed for in-class use in the digital distance education market
2. works the instructor knows or has reason to believe were not lawfully made or acquired
3. textbooks, coursepacks, and other materials typically purchased by students individually

### Protecting Your Own Work

Under the [Copyright Act](http://www.copyright.gov/title17/92chap1.html), a work of authorship is protected from the moment of creation. It does not have to be published, and it does not need a copyright notice. As a user of information, this means that except for very old works and U.S. government publications, you must presume that every creative work is protected by copyright. On the other hand, as a writer or creator of new works, it means that your writings are protected as soon as you click on "save" or "send" or lift your pen from the paper.

### Creative Commons

[Creative Commons](http://creativecommons.org/) (CC) is a non-profit organization created to facilitate the sharing and use of creative works. Under the CC system, creators tell other people how their works can be used by marking it with a CC license. Those who want to make their work available to the public for limited kinds of uses while preserving their copyright may utilize CC licenses. It is important to note that not all Creative Commons licenses are the same, however, all CC licenses require full attribution to the creator of the work. Some licenses restrict commercial uses or derivatives. Both the CC symbols and the licenses are explained in more detail on the site - [Creative Commons](http://creativecommons.org/).

### Copyright Policies for Course Reserves

The policy below ensures protection of both the rights of copyright holders and the fair use rights available to the academic community.

#### Restrictions on e-reserves

* Entire books or journal issues should not be scanned and placed on e-reserve.
* Materials created and marketed primarily for use in the type of course being offered should not be placed on e-reserve. This includes:
  + textbooks
  + workbooks
  + coursepacks
* Articles that are available in the Library's electronic databases should not be scanned; instead, include a link to the article.
* Materials are placed on e-reserve for instructors and students registered for the course. A current mySCNM username and password are required to access course page on mySCNM.
* A copyright notice and original source information should be provided for each work.
* The determination regarding how much of a work may be used is made by evaluating all four of the fair use factors. (See above under “Exceptions to Copyright”)

### Requesting Permission

If you are incorporating copyrighted materials in your teaching, writing, or other work, you may need to get written permission from the person or institution that holds the copyright in those materials. Before requesting permission, you should determine whether or not

permission is required for your use. The following uses do not require permission from the copyright owner:

* + ***Public Domain***. If a work is in the public domain, it is not subject to copyright protection and can be used freely.
  + ***Open Access***. If the work is available with a [Creative Commons](http://www.creativecommons.org) license, you may use it without permission provided that you follow the terms of that license. For uses beyond the scope of the license and fair use, you will need to request permission from the rights holder.
  + ***Fair Use***. If your use of the work falls within the scope of fair use, permission is not needed.

Plan ahead if you can! While sometimes permissions requests are granted (or denied) very quickly, publishers can take 4-8 weeks to respond to a permissions request. If negotiations about the scope of the use or license fee are required, the timeframe could be further extended.

Have a backup plan if you cannot get permission. Any of the following are possible outcomes of the permissions process: you are unable to find the copyright owner; the copyright owner never responds to your request; the copyright owner denies your request; or the copyright owner has restrictions or fees that are not acceptable for your use.

When you're ready to seek permission, start by identifying the copyright owner.

Depending on what type of work you would like to use, this can be a very straightforward or very complicated process. Start by looking at the work to see what information is available regarding the creator and/or rights holder. Note that the author or creator of the work is often not the rights holder. Look for contact information for the copyright holder. When making your request, be specific about how you intend to use the work. You may need to negotiate with the copyright holder. When you receive permission to use the work, keep a record of the responses received. If you need assistance with obtaining permission, contact the Library Director.

### Copyright Clearance Center

If your attempts to find or contact a copyright owner is not successful, another option is the [Copyright Clearance Center](http://www.copyright.com/). Their website allows you, for a fee, to obtain permission to use publications quickly. Just be aware, they are in the business of making money off of copyright and tend to interpret fair use strictly.

### Best Practices for Copyright in Online Courses

* Link to full-text articles or ebooks in the Library's databases instead of downloading them to your site. Linking to materials is ordinarily not a violation of copyright.
* Link to a resource on the Web rather than posting to your site.
* Audio and videofiles should be streaming files rather than downloadable ones. Streaming limits students' ability to download, copy, or redistribute the material. Whenever possible, link to streaming media licensed by the Library.
* Imagesshould be captioned and watermarkedto prevent copying.
* Copyrighted text should be converted to PDF files with Print and Save capabilities disabled to prevent unauthorized duplication.
* For each text, provide anacknowledgement of the source, copyright, and publisher.
* Do not use/post any more of the copyrighted material than the amount needed to serve your purpose.
* Notify students that materials are being made available for teaching, study, and research only.
* Use materials in thepublic domain freely.
* Use materials freely if you own the copyright. (exams, syllabi, notes)
* If you do post copyrighted materials without securing permission, use the four factors of fair use, conduct individual fair use analyses for every work you wish to reproduce and distribute to a class and record your analysis. (See Fair Use Guidelines above) Keep these online for one semester only and restrict access to this material to the students in your class.
* When in doubt, seek assistance from the SCNM Library Director.

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