Copyright for Instructors

Learning Objectives

After this session, you should be able to:
- Define copyright.
- Recognize the difference between copyright infringement and plagiarism.
- Identify public domain works.
- Define fair use.
- Recognize instances of fair use when using works for educational purposes.

What is Copyright?

Copyright can be defined as the right to copy something. It gives an author control over who can use or reproduce his or her creative work. Do not confuse owning a copy of a work with the right to make a copy of that work.

Copyright is automatic. As soon as you create something, you own the copyright and have legal control over how it is used. This also means that a copyright notice does not need to be displayed for an item to be under copyright. For example, works found on the Web are under copyright whether or not they feature a © statement.

Works that fall under copyright include:
- Literary works
- Sound recordings, musical works and lyrics
- Dramatic works and motion pictures
- Pictorial, graphic, or sculptural works

What Copyright Protects

Copyright protects a creator’s ability to:
- Reproduce a work.
- Distribute copies.
- Create derivatives of a work.
- Perform or display a work publically.

Things that do not fall under copyright:
- Common knowledge.
- Ideas, concepts, procedures, and discoveries.
- Data, ingredients, lists, calendars, and rulers.
- Government publications.
- Works that are out of copyright.
- Titles, logos, slogans, etc. (However, these may be registered under trademark law).
Copyright Infringement vs. Plagiarism

**Plagiarism** is the act of passing someone else’s work off as one’s own without giving them due credit. Regardless of whether a work is freely available or still under strict copyright, it is always important to give credit where it is due. When using a work, always cite the location of the original so others can find and use that resource as well. This includes images found by Google!

**Copyright infringement** is the use of someone else’s work without their permission beyond the limits of fair use. When you copy a source, you must cite it to avoid plagiarism. However, this does not mean you have avoided copyright infringement, unless you also have permission to copy it or are able to prove that it falls under public use or fair use exemptions.

Works for Public Use

**Public Domain**

**Public domain** works are those which can usually be copied and used without permission from the owner. Copyright expires after a certain period of time, which means that most titles published before 1923 are in the public domain.

Works generally fall into public domain:
- 70 years after the creator has died.
- 95 years after publication or 120 years from creation if owned by an employer (e.g. Disney), whichever is sooner.

Some works published between 1923 and 1989 may also be in public domain, depending on if or how the creator registered the copyright. Copyright can also be renewed and foreign works have different sets of rules, so research each work carefully before assuming that it is in the public domain.

**Open Access**

Even if a work is still under copyright, an owner may allow it to be used in certain ways. Some owners make their works “open access” or “open source” so that they are available to the public to use, copy, or even manipulate into something new.

Internet sources that allow their images or videos to be reproduced or embedded often include permission notices on the page. If there is no notice, assume that the content is under standard copyright law or contact the site administrator for more information. Just because information is freely available does not mean that it is free for you to use elsewhere.

**Creative Commons**

Creative Commons (CC) licensing is a way for authors to:
- Grant certain permissions to use their work
- Determine how they want to limit a user’s rights to use their content

Creative Commons offers free, flexible licenses in plain language so both creator and user can understand what can and cannot be done with the material. When using works found under these licenses, make sure you follow all stipulations spelled out by the original creator.
**Fair Use**

*Fair Use* is part of copyright law (Section 107) that determines the extent to which you may use or distribute copyrighted works without permission.

Fair use generally permits parts of a work to be used in the following examples:

- Criticism or commentary
- Parodies
- Educational use to illustrate a lesson by teachers or students

Fair use allows educators to use materials for educational purposes in a classroom setting. However, many instructors assume that fair use means that copyright does not apply to the classroom at all. This is not true, so be aware of situations when you will need permission from the copyright owner.

Although copyright law is vague on what constitutes fair use, it has established four factors as a basic rubric. Instructors should examine whether their use of copyrighted material contributes directly to course learning objectives and whether it appeals to the four factors of fair use.

**Four Factors of Fair Use**

Fair use is usually determined by four factors:

1. Purpose of the use
2. Nature of the original work used
3. Amount of original work used
4. Effect on the market of the original

Copyright law is flexible, which can be both frustrating and freeing. Do not assume that citing a source or using it for educational purposes puts it under fair use. Consider each situation using the four factors of fair use. What may be fair in one situation may not be appropriate in another situation. A court will determine if a situation is fair use by taking into account all four factors and how they balance out.

When in doubt, however, contact the owner for permission to use. Even if the item is still under strict copyright, owners sometimes make exceptions on a case-by-case basis.

1. **Purpose of the Use**

   *Transformative use*, or using part of a work to create something new with a different purpose than the original, is generally fair use.

   Other fair use purposes may include:
   - Noncommercial or nonprofit
   - Educational (teaching, scholarship, or research)
   - Commentary, criticism, parody, or news reporting
   - Preservation (e.g. storing a digital copy)

2. **Nature of the Original Work Used**

   Fair use tends to apply more to published works that are purely factual, nonfiction or educational.

   Greater copyright protections are given to unpublished works, or creative works such as fiction, art, music, poetry, or feature films. These are less likely to be considered fair use.

   Fair use almost never applies to consumable items such as standardized tests or workbooks (also see Factor 4: effect on the market).
3. **Amount of the Original Work Used**

In general, the greater proportion of a work that is used, the less likely it is to be considered fair use.

It is also less likely to be considered fair use if you use the parts of a work that are of greater importance (i.e. the core or “heart of the work” – the thing that most defines the work as creatively unique).

Since there are several factors involved in determining the amount of a work that may be used, there is no set standard on how much is too much. One recommendation suggests that no more than 1 chapter, 1 article, or 10% be copied from each work.

4. **Effect on the Market of the Original Work**

Your use of a work should not affect the potential marketability or sales of the original work. In other words, it is fair use if you can prove that you have not deprived the owner of any income.

It is unlikely to be considered fair use if you photocopy workbook pages or large portions of textbook chapters so that students don’t have to purchase their own, because you are depriving those copyright holders of income. Furthermore, if copies or license fees are cheap and easily available, fair use is less likely to apply.

However, if you wish to photocopy a portion an out-of-print text, this is likely to weigh in favor of fair use because the original author may no longer be making money from sold copies.

**Fair Use Examples**

**Fair Use: Text**

If you are unsure as to whether making copies of an article or book is fair use, you may want to consider putting the item on reserve in the library. This will allow the students to access the material while still abiding by copyright law.

<table>
<thead>
<tr>
<th>May be Fair Use</th>
<th>May be Copyright Infringement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Copying a few pages out of a textbook for your class.</td>
<td>Copying every chapter you intend to use from the textbook for your class.</td>
</tr>
<tr>
<td>Copying a single article from a journal.</td>
<td>Copying several articles from the same journal or author.</td>
</tr>
<tr>
<td>Photocopying a few pages of a book for a student.</td>
<td>Photocopying a few pages of a book for the entire class.</td>
</tr>
<tr>
<td>Copying a portion of a work legally owned by an instructor, the library, or the school.</td>
<td>Copying a portion of a work found online or another questionable source.</td>
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## Fair Use: Videos

<table>
<thead>
<tr>
<th>May be Fair Use</th>
<th>May be Copyright Infringement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Showing a film in class.</td>
<td>Showing a film in the student center without a public performance license.</td>
</tr>
<tr>
<td>Showing a film in a face-to-face class.</td>
<td>Uploading a film to your course site.</td>
</tr>
<tr>
<td>Showing a personal-use copy of a film you purchased.</td>
<td>Showing a pirated copy of a film you found on Youtube.</td>
</tr>
<tr>
<td>Copying <em>part</em> of an out-of-print VHS documentary to a DVD to use on the class DVD player.</td>
<td>Copying a VHS movie to a DVD, even though you can buy a cheap copy of the commercial DVD at any store.</td>
</tr>
<tr>
<td>Showing a film related to your subject.</td>
<td>Showing “Toy Story” because your students have been working so hard.</td>
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## Fair Use: Online

Copyright often makes exceptions for “in class use,” but this can be difficult to translate to online courses. The law is still adapting and changing with regards to digital content and distance learning. For now, however, it is prudent to be careful with resources and to seek permission whenever the law may seem murky.

When teaching online:

- Provide notice to students that course materials are subject to copyright and include accurate copyright information.
- Do not use works that may have been illegally obtained or pirated.
- Avoid providing information that is traditionally purchased by students. Students should be encouraged to purchase their own materials, especially if they are priced reasonably and easily available.
- Do not provide more than the amount of a work that can lawfully be used.
- Restrict access to works to only students in your current class.

<table>
<thead>
<tr>
<th>May be Fair Use</th>
<th>May be Copyright Infringement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Posting your own instructor’s notes on your course site.</td>
<td>Posting your favorite scholar’s notes onto your course site without permission.</td>
</tr>
<tr>
<td>Posting a link to additional web materials on your course site.</td>
<td>Copying information from another website and posting it on your course site.</td>
</tr>
<tr>
<td>Placing a copy of an item legally owned by an instructor, the library, or the school on the site.</td>
<td>Placing a copy of an item you found online on the site.</td>
</tr>
<tr>
<td>Placing a single article on the site. (Don’t forget to cite!)</td>
<td>Placing a number of articles from the same journal or author on the site.</td>
</tr>
<tr>
<td>Placing material from a rare or out-of-print source on the site.</td>
<td>Placing material that is cheap and commercially available on the site.</td>
</tr>
<tr>
<td>Posting clips of a film on the site.</td>
<td>Posting an entire film on the site.</td>
</tr>
<tr>
<td>Uploading a podcast on a topic related to your subject to the class server.</td>
<td>Uploading your favorite band’s best album so students can appreciate the “good old days of rock and roll.”</td>
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Get Permission

If you want to use an author’s work and you don’t think it will fall under fair use:

- Find out who holds the copyright.
  - This is typically the author or publishing company.
- Contact the owner for permission.
  - Publishers are often easier to locate than individual authors, but they are also more likely to charge a fee for use.
- If possible, get the permission in writing.

Why Abide by Copyright Law?

- It’s the law – violating it could mean a costly lawsuit against you or your educational institution.
- It helps creators keep control over their own works for their lifetime.
- It helps creators retain credit and monetary benefits so they can continue to produce quality work.
- It provides a good example for your students.
- It’s the right thing to do.

Always ask yourself: “What would I want someone else to do if this were my work?”

Additional Resources

This orientation has been a brief introduction to copyright law and fair use. It should not be the sole resource used to determine whether you are abiding by copyright law. For the full law, cases, examples, and more information, see the additional resources below.

- Copyright: http://www.copyright.gov/
- Copyright Clearance Center [Videos]: http://www.copyright.com/content/cc3/en/toolbar/education/resources.html
- Columbia U Copyright Advisory Office: http://copyright.columbia.edu/copyright/fair-use/
- Stanford U Charts and Tools: http://fairuse.stanford.edu/charts_tools/
- U of Texas Copyright Crash Course: http://copyright.lib.utexas.edu/
- Creative Commons: http://creativecommons.org/