

Innovation without Infringement: Where Teaching Meets Intellectual Property

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Copyright – Basics


- Copyright Law of the United States is detailed in Title 17 of the United States Code.
- There are two fundamental requirements for a work to be eligible for copyright protection: a work must be **Original** and **Tangible**.
- Ideas, methods, facts, and government documents are all non-copyrightable.
- Copyright grants six exclusive rights to authors/creators. These are the right to:
 - Reproduce the work
 - Distribute the work.
 - Create derivative works.
 - Publicly perform the work.
 - Publicly display the work
 - Publicly perform sound recordings through digital audio transmission.

(17 U.S. Code § 102)



Fair Use – Why it Matters

- Contained in Section 107 of Title 17 of the US Code is the principle, commonly called "fair use." This principle allows for the reproduction of copyrighted works for certain limited purposes, including educational, where these reproductions do not constitute copyright infringement.
- Fair use is a powerful tool that empowers educators to teach, research, and share knowledge without being hindered by copyright restrictions. It allows educators to legally use portions of copyrighted materials—quotes, images, video clips, and more—for commentary, critique, and instruction. This flexibility is essential for fostering academic freedom, engaging students with real-world content, and promoting the open exchange of ideas.
- Without fair use, teaching would be confined to what's already licensed or in the public domain—limiting creativity, relevance, and access to current scholarship. Fair use supports modern pedagogy by enabling dynamic, media-rich learning experiences while respecting the rights of creators.
- But it's not a free pass: fair use doesn't cover the wholesale copying of textbooks or using materials without transformative purpose. It's about balance—using content thoughtfully and legally to enrich education.



Fair Use – Text of 17 U.S. Code § 107

- Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—
- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.
- The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.



Fair Use – The Four Factors

- Fair use is not a blanket permission—it's a legal balancing act. When deciding whether a use qualifies as fair, courts (and educators) consider four key factors. These help determine whether using copyrighted material without permission is legally and ethically justified in an educational context.

Here's what each factor means for faculty:

- Purpose of the Use
Is the use educational, nonprofit, or transformative (e.g., for teaching, commentary, or critique)? Classroom use often favors fair use—especially when the material is used to spark discussion or deepen understanding.
- Nature of the Work
Factual and published materials (like news articles or research) are more likely to be fair use than creative or unpublished works (like novels or artwork). The more informational the content, the stronger the case.
- Amount Used
Use only what's necessary. A short excerpt or image may be fine; using an entire book or film likely isn't. The less you use, the more likely it qualifies as fair use. Avoid using the "Heart" of the work.
- Effect on the Market
Will your use reduce the demand for the original work? If students would otherwise need to buy the material, fair use may not apply. Avoid substituting for required purchases.

Fair Use - Checklist





Creative Commons Licensing - Overview

- There have been criticisms that U.S. Copyright Law is too restrictive and stifles the creation of new creative thought.
- A fair amount of this criticism is levied at lengthy term limits of copyright. For an individual's copyright, the length is the author's life plus seventy years.
- In light of these criticisms, Creative Commons Licenses are less restrictive than "All Rights Reserved" but include more stipulations than placing works in the public domain.
- Creative Commons is comprised of six separate licenses. The requirements of these licenses range from simple attribution but allows for any type of remixing to not allowing derivatives.

CREATIVE COMMONS LICENSES



PUBLIC DOMAIN



CC BY



CC BY-SA



CC BY-ND



CC BY-NC



CC BY-NC-SA



CC BY-NC-ND



You can redistribute
(copy, publish, display).



You have to attribute
the original work



You can use the work
commercially



You can modify and
adapt the original work



You can choose license
type for your adaptations

Creative Commons Licenses



An Alternative to Fair Use: Open Educational Resources

- Open educational resources include materials published under Creative Commons license(s) as well as previously published works in the public domain, i.e. works whose copyright has expired.
- Most common types of OER:
 - Textbooks
 - Course software
 - Course modules
(Search OER engines for limited lesson plans, worksheets, activities, etc.)
 - Streaming videos or video series
(Search YouTube for a term, select "Filters," select Creative Commons.)
 - Open Access Journals
 - Online Tutorials, including interactive simulations
(PhET Interactive Simulations for Science & Math)
 - Full courses including supplemental materials



Intellectual Property Rights and GenAI

- For a work to be copyrightable, human authorship is required.
- Use of AI as an assistive tool and/or incorporation of some AI generated content into a copyrightable work does not void copyright protections.
- Using AI tools can potentially risk copyright infringement due to large publicly available data sets these tools are trained on, of which some of that data will likely be copyrighted.
- Fair Use arguments with generative AI are complex as not all countries legislate on AI universally.
- AI is best used as an assistant to whatever task you are trying to accomplish, rather than use it to produce content which could incur IP complications, use its ability to parse through mass amounts of data to synthesize and organize your project/task.

Resource Links

- [Campus Guide to Copyright](#)
- [Copyright on Campus Video](#)
- [Fair Use Checklist](#)
- [Copyright and Artificial Intelligence U.S. Copyright Office Report \(Parts 1 thru 3\)](#)
- [The interaction between intellectual property laws and AI: Opportunities and challenges](#)