



# What Faculty Need to Know About Copyright for Teaching

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American University Library – 2010

*The text here serves as a guideline and is not intended as legal advice. Refer to appropriate copyright law and University policies for full information. If you have a specific legal question pertaining to copyright law, you should contact the Office of General Counsel at (202) 885-3285.*

*Several texts have been useful in preparation of this resource and they are cited in the resources section at the end of the document. Material used was done so with permission and further use of this document is subject to the licenses and copyright in those original works.*

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## **What is covered by copyright?**

United States Copyright Law protects authors' original "works of authorship" that are fixed in a tangible medium.

First, a work of authorship must be "original" in order to qualify for copyright protection. This means that the author must have engaged in some intellectual endeavor on his/her own and the work must show a minimal amount of creativity.

The following are not protected by copyright law because there is no minimal amount of creativity: facts; words and short phrases such as names, titles, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering or coloring; mere listing of ingredients or contents.

Second, the work of authorship must be fixed in a tangible form. A work is "fixed" in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.

Ideas alone are not protected, but their forms of expression are covered.

Works, for purposes of copyright protection, include the following categories:

- Literary works
- Musical works
- Dramatic works
- Pantomimes and choreography
- Pictorial, graphic and sculptural works
- Motion pictures and other audiovisual works
- Sound recordings
- Architectural works

Works created on or after January 1, 1978 are covered automatically whether or not they have a copyright notice. In addition, an author has the option of registering his/her work with the U.S. Copyright Office. Copyright Registration gives certain legal advantages to authors who register their works.

Example: A student's Web page, if original, is automatically covered by copyright.

## **What rights are covered by copyright and how do they affect use of copyrighted materials in courses?**

Under U.S. Copyright Law, the copyright owner (who may be either the author/creator or his/her transferee) has the exclusive right to do or authorize the following:

- To reproduce their works in copies or phonorecords
- To use their works to create new derivative works
- To distribute copies or phonorecords to the public by sale or transfer of ownership
- To perform publicly literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works
- In the case of sound recordings, to perform the work publicly by means of a digital audio transmission

### **NOTES:**

- ***If your publisher holds the copyright to your work, you may not use it freely except under the exceptions and fair use clauses described below.***

Many of the activities conducted in the classroom encompass these exclusive rights. For example, in the course of teaching a professor may photocopy articles, upload Web sites, copy software, share computer files, create musical performances or perhaps have a public showing of a film. Generally, one must obtain permission from the copyright owner in order to use one of the exclusive rights. Fortunately, copyright law provides some exceptions to this general rule that allow educators to make use of materials in these ways, provided they follow certain guidelines or criteria.

## How long does copyright protection last?

Due to many revisions of U.S. Copyright Law, the date of publication and creation is important in informing you whether or not each work is copyright protected. In general, it is more likely than not that:

- Works, published before 1923, are in the public domain which means that their copyright protection has expired.
- Works, created on or after January 1, 1978, are copyright protected for the life of the author plus 70 years.
- Works, published between 1923 and December 31, 1977, are likely copyright protected provided that the published works had proper notice of copyright. Those published works without a proper notice of copyright are in the public domain which means that their copyright protection has expired.
- Works of corporate authorship, created on or after January 1, 1978, are copyright protected for either 95 years from publication or 120 years from creation, whichever is shorter.

For a more comprehensive explanation as to how long copyright protection lasts, please refer to the charts in the resources section below for additional details including copyright terms for unpublished materials.

### NOTES:

- In most circumstances, Post 1923 Published Works that are out of print are still covered by copyright and if their use is beyond the scope of fair use or other exemptions (see below), permission should be obtained.

### Resources:

- Russell, C. Complete Copyright. Chart on duration of copyright, p. 10 and 14
- Gasaway, L. Chart, "When works pass into the public domain"  
<http://www.unc.edu/~unclng/public-d.htm>

## What materials can be copied, performed or distributed in the classroom without obtaining permission?

- Works in the public domain, including works for which the copyright has expired.
- Facts.
- Photographs that are exact reproductions of works in the public domain.
- Works produced by the United States government, unless the work has been contracted and produced by another entity. State government material may or may not be in the public domain.
- Works that are covered by a license or contract that permits classroom use.
  - ~~NOTE: Most library databases are covered by licenses. If you have a question about a particular item of the licensed work you may contact the e-resources librarian, Claire [redacted]~~
- Articles in journals that explicitly allow non-profit educational use without permission.
  - **NOTE:** Check the copyright page of the journal you are using before getting permission.
- Works that the creator has made available through a commons or institutional repository.
  - **Examples of commons or repositories:**
    - Washington Research Libraries Consortium Institutional Repository
    - Public Library of Science, [www.plos.org](http://www.plos.org)
    - Creative Commons, [www.creativecommons.org](http://www.creativecommons.org)
- All other works if your use meets the criteria for fair use or the classroom exemption.

### Resources:

- Russell, C. Complete Copyright. Charts on p. 10 and 14.
- Gasaway, L. Chart "When works pass into the public domain" [www.unc.edu/~uncclng/public-d.htm](http://www.unc.edu/~uncclng/public-d.htm)

## How can I use copyrighted materials in the classroom?

### The BASICS:

- Use lawfully acquired copies of materials, (e.g., items you or the institution purchased, obtained through interlibrary loan, or licensed). Do not use pirated or illegally copied materials.
- Even if you are permitted to use the works, include copyright notices on any copyrighted materials you use.
- In general, it is a good idea to use only the amount of a work that is needed to achieve your pedagogical goals.

### The SPECIFICS:

Besides obtaining the copyright owner's permission to use the work, the U.S Copyright Law provides two options that allow professors to use materials in the classroom:

- **110(1) Exemption:** There is a special exemption in the U.S. Copyright Law that applies to face-to-face teaching. This is a situation where the professor is physically present in a classroom or similar place devoted to instruction and is using the materials in the context of a discrete class session. Under § 110(1), faculty and students may only perform or display – but not reproduce or distribute – any copyrighted work in the course of face-to-face teaching activities in a classroom, without seeking permission. If this provision doesn't meet your needs, you can see if a case can be made for fair use (see below).

### Examples of classroom performances of non-dramatic music or literary works:

Group of students sings an arrangement of a Beatles' song in class as part of the lesson plan.

Professor does a reading from a chapter of a novel in class as part of the lesson plan.

- **Fair Use:** Materials may be used for teaching (including creation of multiple copies) as well as for purposes such as criticism, comment, and news reporting by applying a four factor analysis. You must weigh each factor and assess the overall impact of your use. Meeting a single factor will not suffice; similarly, failing one does not necessary mean you cannot use fair use.

### The four factors to consider are:

- **Purpose and character of the use**, including whether such use is of a commercial nature or is for nonprofit educational purposes.  
Non commercial and educational uses are favored over commercial ones. Transformative uses (e.g., those that use works to create something new) are favored. Fair use of a work intended for an educational market such as a workbook may be less favored.  
Example of transformative use: Professor includes portions of copyright works in a multimedia presentation for a class.
- **Nature of the work.** Factual works are favored in fair use decisions over use of highly creative works. In general, published works are favored over unpublished works.



- **Amount and substantiality of the portion used** in relation to the work as a whole. Use is more likely to be considered fair for small quantities, where the portion used is not significant to the entire work, and where the amount is appropriate for the intended educational purpose.
- **Effect of the use upon the potential market** for or value of the work. Factors favoring fair use are use of lawfully acquired or purchased copies of the original works, a small number of copies made, no similar product is marketed by copyright holder, and there is a lack of a licensing mechanism. Factors arguing against fair use are repeated long term use and making materials widely available as on the Web.

**Fair Use is not a blanket exemption to copyright law.**

Rather, it must be judged on a case by case basis. In an effort to simplify the process of determining whether a classroom use was a fair one, a set of Guidelines for Classroom Copying of Books and Periodicals was agreed upon by a group of authors and publishing organizations.

~~In addition, you should review the University's "Policy on Reproduction of Copyrighted Works" as to using copyrighted works.~~

#### Scenario

A professor rents a DVD of the film Hotel Rwanda from a local video store to show in her class on African History. The disc is labeled For Home Use Only. Is this use permitted?

This use falls within the 110(1) exemption of the U.S. Copyright Law that permits a classroom viewing in the context of a class session. Public performances of the video to a campus club would not be covered. Showing the same DVD to the class by "streaming" it through a Blackboard site is not covered by this exemption and certain criteria would need to be met to deliver the material in that fashion.

## **If I make a case for fair use and the owner disagrees can I still be held liable?**

Although you still may be liable for actual damages and profits, there is a good faith fair use defense provision in the law that may remit only statutory damages even if the copying was deemed not fair use provided that the person (who is an employee or agent of a non-profit educational institution acting within the scope of his/her employment) copying material reasonably believed that he or she was following fair use. Therefore, it is a good idea to keep a written record of your rationale in making a fair use decision and several checklists have been published to assist in that process.

### **Resources: Fair use checklists**

- Columbia University Copyright Advisory Service. [Fair Use Checklist](#)
- Russell, C. Complete Copyright, p. 21.

## **Is it legal to use course packs for my class and if so how can I do that?**

Course packs are compilations of articles, chapters and other texts that are bound together for use in a particular class. Publishers are concerned that use of course packs could undermine sales of textbooks and they rely on permissions for their income. Court cases have ruled that course packs require permission, but none of the cases have involved single non-profit educational institutions.

American University's current policy follows that of most educational institutions. Permission of the copyright holders must be granted for materials to be included in course packs. Course packs can be ordered from the campus bookstore which obtains the copyright permissions and includes the royalty fees in the cost of the packets.

All materials included in the course packs should include the original copyright notice and attributions to the source.

**Under no circumstances** may a course pack include an entire book or journal just for the purpose of avoiding purchase of the books. Consumables such as workbooks, lab manuals or standardized texts also may not be included in course packs.

~~NOTE: According to the University's "Policy on Reproduction of Copyrighted Works", any faculty member may make multiple copies of an article for use in class and distribute them to students independently. Similarly, the library will place individual copies of articles on reserve for student consultation. Use of the same article for subsequent semesters requires the copyright owner's permission.~~

## How can I use copyrighted materials in Blackboard courseware?

### The BASICS:

- Use legally acquired or purchased copies of materials and always include copyright notices and remind students that copyrighted works should not be copied and redistributed to others.
- Generally restrict the Blackboard access to those students enrolled.
- Block access to materials after the course has ended.
- When possible, it is preferable to link to electronic material that is already licensed by the library rather than make digital copies.
- Digital materials are covered by copyright law and fair use also applies in this environment.

### The SPECIFICS:

Besides obtaining the copyright owner's permission to use the work, you can select between one of two provisions in the law that allow use of copyrighted materials in Blackboard:

- You can make a claim of fair use OR
- You can use the 2002 Technology, Education, and Copyright Harmonization Act (TEACH Act) provisions which were developed to address distance education. The TEACH Act permits displays and performances of copyrighted works to be transmitted and used for instructional purposes, without permission of the copyright owner, if several conditions are met. In order to qualify, you must be an accredited nonprofit educational institution or governmental body. In order to transmit, a work needs to used:
  - By, at the direction of, or under the actual supervision of an instructor
  - as an integral part of a class session
  - as part of systematic mediated instructional activities
  - directly related and of material assistance to the teaching content.
- The transmission shall be made solely for and reception limited to (as technologically feasible) students enrolled in the course, and technology that reasonably prevents retention in accessible form for longer than a class session, and technology that prevents unauthorized further dissemination in accessible form, and no interference with copyright owner's technological measures that prevent such retention and dissemination.

**Provided that the certain above conditions are met, the TEACH Act allows you to:**

- transmit a performance of non-dramatic literary or musical works or reasonable and limited portions of any other work, including portions of dramatic literary works (e.g., Shakespeare on film) or musical works (e.g., a performance of West Side Story).
- Display any work in an amount comparable to that typically displayed in the course of a live classroom session.
- Use the work if it is directly related to the teaching content and limited to those enrolled.
- The work used is not a textbook, course pack or other material typically purchased or acquired by students for their personal retention; nor is it a work that is marketed primarily for performance or display as part of a digitally transmitted mediated instructional activity.

### Resources for the TEACH Act:

- Gasaway, L. Chart, "TEACH Act"
- ALA, "TEACH Act Best Practices using Blackboard"
- NC State, "The TEACH Toolkit"

### Scenario

A professor wants to make a DVD of an entire film available on her Blackboard course. Does she need to get permission?

Most films fall under the category of dramatic literary or musical works and the TEACH Act specifies use of limited portions of these works. As long as the Blackboard site were restricted to the class and the film was directly related to the class content, a segment that would be comparable to what one would ~~show in an individual class session would probably fall~~ within the TEACH guidelines. If however, she ~~wants to show the entire film by streaming it through Blackboard, she must either make a fair use case or get permission. Looking at the four factors one can see that factors in favor of fair use are the~~ educational use and impact on the market (assuming this is a one time use and that the faculty member or institution has already purchased the DVD). Factors weighing against fair use would be the nature of the work which is highly creative and the amount used. In this case, it may be prudent to obtain permission from the copyright holder.

### Scenario

A professor has scanned several hundred images from various texts to represent Western culture and politics during a particular period of history. He wants to leave them on his Blackboard site throughout the semester so that his students can consult them as they wish in relationship to the texts they are reading.

Although the works probably would be limited to those enrolled in this professor's class and seem relevant to the teaching content of the course, aspects of this use would be difficult to justify under the TEACH Act. The amount of the work used goes beyond that which could be construed as a single classroom session and the individual images are full works. Fair Use may apply in this case, but if the works were used in multiple semesters, permissions may be required. Linking to images available in licensed databases could be a safer choice.

## How can I use Blackboard for reserve readings?

You may legally scan portions of journals or books and place them on your Web site or on reserve through Blackboard if:

- Copies of the materials are legally acquired and restricted through technological measures to those enrolled in class;
- Always include a copyright notice as it appears on the document;
- The scanning is limited to portions and is not used to replace purchase of materials. In the case of journal articles you can probably make a fair use case for an entire article, but not every article from a single issue of a journal; AND
- You remove the scanned images at the end of the semester or required class period.

In most cases you will need to seek permission if you intend to use large amounts of works (e.g., entire books) or use materials over many semesters. ~~Some materials, including most library databases that are explicitly licensed for Web use by AU may be used in their entirety and for repeated semesters. For more information, contact Bobb, Reeves, Electronic Resources Specialist, at 202-885-5167.~~

**May I keep the same articles on my Blackboard site or on e-reserve each semester?**

Except for works in the public domain or those that are licensed, you need copyright permission in order to keep the same materials on reserve for subsequent semesters. ~~The University Library can provide this service through its membership in the Copyright Clearance Center. Contact e-reserves at 703-985-9251 for more information.~~

## **May I let my students download articles that I have placed on Blackboard?**

In general this is not a good idea because it would be very easy for them to redistribute the electronic documents. You should include a warning in the materials notifying students that the materials are made available through fair use or the TEACH Act and further copying and redistributing the material is a violation of the copyright law.



## **Are there any problems with linking to Web pages in my Blackboard site?**

It appears that there is no copyright infringement in linking to another site.

There may be cases where it is prudent to link to a top site or home page rather than link deeply into a site. In the latter case you may be skirting important information about copyright, uses, advertising or other information that the copyright holder wants the user of its site to encounter. Similarly, when frames are used a user may be directed to another site that appears in the frame of the original site, potentially creating a problem of commercial competition if the user cannot tell who created the original information.

## **Are there any special requirements for using art, photographs or images?**

Display of visual works in the classroom is covered by the classroom exemption of the U.S. Copyright Law, in section 110(1) and the TEACH Act has provisions to allow display through electronic courseware in an amount typically displayed in the course of a classroom session. Uses beyond these would require application of fair use or copyright permission.

In general, artistic works have a high level of protection under copyright law and it is more challenging to make a fair use case for their use. In the case of photographs, copyright may reside with several owners including the photographer, the creator of an original work that is being photographed, and the subject of the image.

In the classroom it will often be difficult to limit the amount of an artistic work (i.e., a portion of a picture or painting) used to achieve a fair use. In general, if using the whole work supports your teaching goals and the other fair use factors are controlled for fair use, then it may be appropriate to use the entire work in a class.

Photographs of existing works in the public domain are generally covered by copyright unless they are exact reproductions of the public domain work. Two dimensional photographs of three dimensional works such as sculpture usually involve more creativity and are therefore more stringently protected by copyright.

Some art works are covered by a special protection called the Visual Artist Rights Act of 1990. Specifically, copyright law provides some artists of visual works the moral rights of attribution and integrity. This mostly applies to museum paintings and other limited edition fine arts intended for exhibition. One of the artist's rights "prohibits the modification and distortion of works prejudicial to the artist's honor or reputation."

It is unclear whether manipulating pictures through digital technologies is a copyright infringement, except in instances where it is used to create parodies which are considered fair use. Moral rights and defamation issues may also be implicated.

### **Scenario**

A professor has assigned his students to use images of photographs or art works from DC museums to create a poster about a book they have read for the course. Students can use multiple images or use image software to manipulate the images. Is this use permissible?

Although the students would be creating derivative works, this application may fall within fair use assuming that no further use will be made of the material beyond the classroom (e.g., the material is not going to be posted to a public Web site or displayed at an exhibit). To acknowledge the moral rights of the artist, it would be appropriate for the students to document in writing the nature of the changes they made to the original works and to cite the ownership and description of those works.

## **Are there any special requirements for using music?**

Provided that you either obtain the copyright owner's permission or satisfy a copyright exception, you may play or perform musical works (e.g., in the classroom for teaching purposes).

Specifically, streaming of digital music from personal faculty, library or university collections through Blackboard may be permissible for classroom use if the uses fall within the fair use provisions of the U. S. Copyright Law or the Teach Act. For specific questions, contact Diana Vogelzang at [dvogelz@american.edu](mailto:dvogelz@american.edu).

Some works will be in the public domain, but it is important to remember that recorded musical works may have more than one copyright (e.g., in the musical work itself, usually held by the composer and in the recording, usually held by the recording company.) If you need to obtain permission, you need to acquire it from all rights holders.

If you perform musical works or play musical works outside the classroom for a student group or for recreational purposes, and they are not in the public domain, you may need to pay to license that use.

- If you plan to use non-dramatic musical works (e.g., a symphony) outside the classroom, you should check with the Office of Risk Management to see if the University already has the necessary licenses.
- For performances of non-dramatic musical works that the University does not have the necessary licensing agreements you can contact a performing rights group such as the American Society of Composers, Actors and Publishers (ASCAP), Broadcast Music International (BMI) or EMI or Society of European Stage Authors and Composers (SESAC). To perform dramatic musical works (e.g., an opera or musical) you need to contact the rights holders directly.

As in the print environment, certain guidelines have been issued that may be useful in thinking about fair use in the music environment: Guidelines for Educational Use of Music

These do not have the force of law and fair uses of music materials can exist beyond the practices described here.

## **May I use copyrighted materials on a class Web site without obtaining permission?**

The same provisions apply here as apply through Blackboard. You should limit access to works used under the fair use provisions of the U.S. Copyright Law or the TEACH Act by password or other technological means. If you use materials for subsequent semesters you should obtain permission.

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## **May I give my students assignments to create Web sites projects that use copyrighted materials?**

Most student use will fall under fair use provided access to their site was restricted to those enrolled in the class and access to the site lasts only for that class semester. If students anticipate using their projects beyond the classroom, it is a good idea to obtain permission at the time of creation.

**You should remind students when they use materials from the Internet that:**

- materials found on the Internet may be protected by copyright even if there is no copyright notice.
- they should use proper citations. For assistance, students may be referred from the library website to the citation style guides.
- they should protect the integrity of copyrighted works.

## **May I email articles to my students?**

This is not the best idea. You have no way of controlling "downstream" uses and the practice may be considered distribution, a right reserved by the copyright holder. A better choice is to link to the article from your Blackboard or secure Web page.

## **What can I do to make materials more accessible to students?**

- Whenever, possible you should retain copyright ownership of your own works.
- Encourage journals in which you publish to make materials available without permission for certain types of educational use.
- Publish your materials in an Information Repository or Creative Commons that makes materials available freely or at licensing levels you determine.

**Fair Use Checklist**

Copyright Advisory Office  
Columbia University Libraries  
Kenneth D. Crews, Director  
<http://copyright.columbia.edu>

Name: _____
Institution: _____
Project: _____
Date: _____
Prepared by: _____

**Purpose**

**Favoring Fair Use**

- Teaching (including multiple copies for classroom use)
- Research
- Scholarship
- Nonprofit educational institution
- Criticism
- Comment
- News reporting
- Transformative or productive use (changes the work for new utility)
- Restricted access (to students or other appropriate group)
- Parody

**Opposing Fair Use**

- Commercial activity
- Profiting from the use
- Entertainment
- Bad-faith behavior
- Denying credit to original author



**Nature**

**Favoring Fair Use**

- Published work
- Factual or nonfiction based
- Important to favored educational objectives

**Opposing Fair Use**

- Unpublished work
- Highly creative work (art, music, novels, films, plays)
- Fiction

**Amount**

**Favoring Fair Use**

- Small quantity
- Portion used is not central or significant to entire work
- Amount is appropriate for favored educational purpose

**Opposing Fair Use**

- Large portion or whole work used
- Portion used is central to or “heart of the work”

**Effect**

**Favoring Fair Use**

- User owns lawfully purchased or acquired copy of original work
- One or few copies made
- No significant effect on the market or potential market for copyrighted work
- No similar product marketed by the copyright holder
- Lack of licensing mechanism

**Opposing Fair Use**

- Could replace sale of copyrighted work
- Significantly impairs market or potential market for copyrighted work or derivative
- Reasonably available licensing mechanism for use of the copyrighted work
- Affordable permission available for using work
- Numerous copies made
- You made it accessible on the Web or in other public forum
- Repeated or long-term use