

Copyright *a primer* FROM LEARN NC

Copy•right \kăp-ē-rīt\ *n* A form of protection provided by the laws of the United States to the authors of “original works of authorship,” including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works. Copyright protection reserves certain exclusive rights to the author of a work, including rights of reproduction and public performance.

Copyright law

RIGHTS RESERVED TO AUTHORS

Section 106 of the 1976 Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

- To reproduce the work in copies or phonorecords;
- To prepare derivative works based upon the work;
- To distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- To perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works;
- To display the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work; and
- In the case of sound recordings, to perform the work publicly by means of a digital audio transmission.

It is illegal for anyone to violate any of the rights provided by the copyright law to the owner of copyright. (However,

these rights are not unlimited in scope; see Limitations on Copyright, below.)

WHO CAN CLAIM COPYRIGHT

Copyright protection begins automatically as soon as a work is created in fixed form. Registration with the U.S. Copyright Office is not required. This means that any written document, drawing, or photograph, whether published or not, may be eligible for copyright. Only the author or creator of the work (or those deriving their rights through the author or creator) can claim copyright.

Copyright registration

Registration with the U.S. Copyright Office is not required for an author to claim copyright. However, registration makes it easier to sue for monetary damages when copyright is infringed.

Copyright notice

Prior to 1989, notice was required for a work to be protected by copyright. This is no longer the case, but the rule may still apply to works created before 1989. Additionally, a copyright notice serves as fair warning of the work’s status. If someone infringes on a copyright (by reprinting the work, for example), he or she may plead innocent infringement if no copyright notice was given. If copyright notice was given, the infringer cannot plead ignorance.



PHOTO BY ALASDAIR-D / FLICKR.COM, WITH TALK BUBBLES ADDED.

A typical copyright notice contains the symbol ©, the year of first publication, and the name of the copyright holder, for example © 2005 John C. Doe. The use of the copyright notice does not require permission from the U.S. Copyright Office.

LIMITATIONS ON COPYRIGHT

Copyright protection is not unlimited. Terms of copyright are limited, and individuals retain certain “fair use” rights to copyrighted work.



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Expiration of copyright

Under current U.S. copyright law, most works are automatically protected from the moment of their creation and is ordinarily given a term enduring for the author's life plus an additional 70 years after the author's death. Consult the U.S. Copyright Office for details.

Fair use

Fair use is any copying of copyrighted material done for a limited and "transformative" purpose such as commentary, criticism, or parody. "Fair" uses do not require permission from the copyright owner. (See below for more information.)

Other educational use

Section 110(t) of the Copyright Act explicitly permits teachers and students in a nonprofit educational institution to perform or display any copyrighted work in the course of face-to-face teaching activities. In face-to-face instruction, such teachers and students may act out a play, read aloud a poem, display a cartoon or a slide, or play a videotape so long as the copy of the videotape was lawfully obtained. In essence, Section 110(t) permits performance and display of any kind of copyrighted work, and even a complete work, as a part of face-to-face instruction.

Distance learning. The 2002 TEACH Act extended this permission to certain distance learning environments, but with additional restrictions to ensure

that the work is used only in an instructional context and that (in the case of performances of audiovisual works) the work cannot be illegally downloaded by students or further distributed.

Warning! This provision does not permit teachers to make and distribute copies of works. It extends only to performances and displays of single copies of a work. Also be certain that your display or performance of the work is exclusively instructional; the showing of a film on the last day of school for entertainment purposes may not fall under this provision and is not covered by fair use.

WORKS NOT ELIGIBLE FOR COPYRIGHT

Several categories of material are generally not eligible for federal copyright protection. These include:

- Works that have not been fixed in a tangible form of expression (for example, choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded)
- Titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or coloring; mere listings of ingredients or contents
- Ideas, procedures, methods, systems, processes, concepts, principles, dis-

coveries, or devices, as distinguished from a description, explanation, or illustration

- Works consisting entirely of information that is common property and containing no original authorship (for example: standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources)

With regard to education, a lesson plan that is written down and published is eligible for copyright protection in its written form, but the ideas and/or teaching strategies described by the written plan are generally not eligible for copyright and hence can be borrowed or used by another teacher in his/her teaching.

COMMON COPYRIGHT VIOLATIONS

The internet and related technologies have not changed the principles behind copyright law, but they have made it easier to unknowingly violate the law. Additionally, although fair use allows for personal and educational use, it is easy for teachers and students to overstep the provisions of fair use.

- Posting something to the public web is legally considered to be publication. If you post copyrighted material, such as an image, to a website where anyone can view it, without specific permission, you are infringing upon copyright. This includes material already published on the web! (You may link to material already on the web.)
- If students use copyrighted material such as images in reports or in-class multimedia presentations, the teacher may not publish those reports or multimedia presentations to a school website.
- Distributing a copyrighted resource via email, especially over a listserve or discussion list, may be a violation of copyright.
- Photocopying an article or other resource for personal use generally falls under fair use, as does asking students to make copies; but making multiple copies and distributing them, even in a classroom setting, may not fall under fair use.

Works available for use

Many works, copyrighted or not, are available to the public for various kinds of use, including republication and distribution.

THE PUBLIC DOMAIN

The public domain comprises works “owned by the people” and not covered by copyright. Works may enter the public domain in various ways:

- Material not eligible for copyright is in the public domain by default.
- When the copyright on a work expires, it enters the public domain. It is then “owned by the people” and may be used by anyone for any purpose.
- Works created by the United States government or by its employees as directed work are exempted by U.S. Copyright Law and are thus in the public domain.
- Occasionally, a work’s creator may freely release it to the public domain. However, this is rare. The lack of a copyright notice does not mean that a work is in the public domain!

Once a work is in the public domain, it is in the public domain forever (there have been exceptions, but they are rare). If material in the public domain is incorporated into a new work, only the parts of the new work that are original are eligible for copyright. To take a fairly trivial example, the creator of a photographic calendar owns rights only to the original part of the calendar — the photographs — and not to the names of days or months!

PUBLIC LICENSES

Any copyright holder may license a work to individuals or the public for various uses. A license permits the licensee to exercise some or all of the author’s exclusive rights in the work in a limited fashion defined by the terms of the license. Most licenses require payment and are granted to individuals for specific purposes. For example, when you

buy a DVD, you are granted a license to view the film at home, but you are not permitted to show the work publicly or to make copies; these rights are retained by the copyright holder. A theater company may purchase a license to perform a play but that license may not grant the right to videotape the performance.

A public license, by contrast, is typically granted free of charge to anyone who wishes to obtain it, and grants broad rights to use and/or distribution. Public licenses are a boon to educators, because they permit broad use of a work without reliance on fair use.

Open source software

Open source refers to software applications that may be freely run, distributed, and modified. Most open source software is licensed under the GNU General Public License (GPL), which grants the

following rights, or “freedoms”:

- the freedom to run the program, for any purpose.
- the freedom to study how the program works, and modify it (if the source code is made available).
- the freedom to redistribute copies.
- the freedom to improve the program, and release the improvements to the public (if the source code is available).

Additionally, the GPL requires that copies and derivative works of software licensed under the GPL be itself licensed under the GPL. This legal mechanism, sometimes called “copyleft,” ensures that open source software will remain open source.

Other open source software, such as the Firefox web browser, is licensed under various other public licenses. Some software is made available under several different public licenses. Additionally, some software, such as Adobe Acrobat Reader, is made available under a more restrictive public license that does not permit modification.

Open source vs. shareware. Open source software is not the same as shareware, which is software made available by its creators for public use with the expectation that those who find it useful will make a (usually small) one-time payment. Shareware is distributed on the honor system, but continuing to use shareware after a stated trial period may be a violation of copyright.

Creative Commons

Creative Commons is a nonprofit organization that offers a flexible licensing system for creative work. Its licenses are designed for authors and artists who do not intend to profit from their work and wish it to be widely used and shared. Creative Commons licenses use the slogan “Some Rights Reserved” to distinguish them from the typical copyright notice “All Rights Reserved.”

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Creative Commons licenses are public licenses available free of charge to anyone. They allow anyone to use, republish, or distribute a work in any medium. Creators may place any or all of the following restrictions on the use of their work:

- **Attribution.** The creator permits others to copy, distribute, display, and perform the copyrighted work — and derivative works based upon it — but only if they give credit in the manner requested.
- **Noncommercial.** The creator permits others to copy, distribute, display, and perform the work — and derivative works based upon it — but for non-commercial purposes only.
- **No Derivative Works.** The creator permits others to copy, distribute, display, and perform only verbatim copies of the work, not derivative works based upon it.
- **Share Alike.** The creator permits others to distribute derivative works only under a license identical to the license that governs the original work.

Fair use

Fair use \fer yoos\ n Any copying of copyrighted material done for a limited and “transformative” purpose such as commentary, criticism, or parody. “Fair” uses do not require permission from the copyright owner.

There are no simple guidelines for “fair use.” It is a right set forth in the U.S. Copyright Act, but how and when it may be applied is left to the discretion of judges and juries. Be aware that no guidelines provided in this article are guaranteed to be accepted by all courts!

FOUR FACTORS DETERMINING FAIR USE

Judges typically consider four factors in determining whether a given use of copyrighted material is fair use.

What is the character of the use?

Educational, non-profit, and personal use is likely to be considered fair use; commercial use is not.

- Personal use includes uses such as making copies for one’s own files or using the copyrighted material in a paper written for a class (but not otherwise shared). For example, to use a copyrighted image in a research paper or multimedia project created for a class is personal use, but if the paper or project is posted on the web, it is legally published, and this use no longer falls under fair use.
- Educational use includes use by a teacher or student in a class or distance learning environment.

Uses that are “transformative” are most likely to be protected — that is, uses that do not merely reproduce the original work but transform it into something new or of new utility. Examples of transformative uses are quotation, criticism, commentary, and parody.

What is the nature of the work to be used?

If the material used is factual in nature, use of the work is more likely to be considered fair use. Additionally, if the work has been published, use of it is

more likely to be considered fair use. Unpublished material (such as historical correspondence) is less likely to fall under fair use guidelines. Material that is made available to the public on the web is legally considered to be published.

How much of the work will you use?

You typically may reproduce only a small piece of a work — a common guideline is 10 percent. Another common guideline is that you may not reproduce a “substantial amount” of the work. This is less precise, but a “substantial amount” may be less than 10 percent in some cases. For example, a short clip of a scene from a movie may be far less than 10 percent of the movie, but still repre-

sent a substantial amount of the creative content of the movie.

How much of a work you may reproduce depends on the media in which the work was published (text, image, video, etc.).

What effect would this use have on the market for the original or for permissions if the use were widespread?

The primary purpose of copyright law is to promote intellectual activity by ensuring that creators of works can profit from their sale. Ask yourself: is my use of this material preventing the ability of its creator to make money from its sale? If yes, your use of the material is likely not fair use. Hence you could play a piece of recorded music in your classroom but not distribute the music in an MP3 file to your students; the latter use interferes with the ability of the copyright holder to make money from the sale of the music, while the former does not.

This is often the most important of the four factors to consider, but remember that it is not the only factor — a creator retains rights to a work even if he or she does not intend to profit from it!

FAIR USE IN EDUCATION

Educational use and personal use cover most classroom uses of copyrighted work. However, the web and the desire to share or publish students’ work make it easy for teachers and students to cross the line from fair use into copyright violation. As a guideline, consider educational use to cover only what happens within the confines of your classroom (or distance learning environment).

Teachers and students are granted special protections under U.S. copyright law. If we don’t use them, we risk losing them.

What is not educational use. To republish or publicly perform a work does not fall under fair use. For example, a student may use a copyrighted image in a multimedia presentation to the class, but may not post that presentation to the web where anyone could see it. An English class may act out parts of a play as they study it, but may not give a public performance.

Fair use in distance learning

For the most part, fair use guidelines in distance learning environments are identical to those in face-to-face classrooms. Special rights granted to educators beyond fair use (see copyright) are subject to special restrictions in distance learning environments. The term “distance learning environment” also assumes a special restricted-access area for instructor and students, not a publicly available space on the web.



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Permission to use copyrighted materials

If your desired use of a copyrighted work does not fall under fair use and the work is not licensed for public use, you must ask permission before using it. Be sure to think through carefully what you will want or need to do with the material and to request all the permissions you will need! If the owner of copyrighted material grants you specific permissions, that does not constitute a blanket grant to do what you like with the material. For example, if you obtain permission to include a photograph in a printed class anthology, you may not additionally post the anthology on your school's website unless you obtain separate permission for web use! Most copyright holders are willing to help teachers and students, however, so long as the request is reasonable.

PERMISSION REQUEST LETTERS

A permission request should include the following:

- Any information needed to identify the original work, such as author and/or editor, title, edition, copyright date, volume and issue number, etc. If the work is available on the web, provide the URL.
- The exact material to be used, including page numbers, chapter, etc. If possible, include a photocopy of the material you wish to use.
- How you will distribute the copies — on the web, in a newsletter, in a printed anthology of student work, etc.
- The number of copies to be made.
- Whether or not you intend to sell the material.

Be sure to address your letter to the proper person — make sure that the person giving you permission is in fact the copyright owner!

If the material you wish to use is on the web, an email request for permission is appropriate.

Copyright on the web

The web makes it very easy to share information with students, parents, and colleagues — and very easy to violate copyright law! For legal purposes, publishing something to the web is exactly like publishing it to print. Fair use guidelines are identical whether you are using a work on the web, in print, or in face-to-face public performance. If you would not distribute 8x10 glossy prints of a photograph, for example, don't post a digital copy of the photo on your public classroom website!

Linking

A simple text link from one web page to another typically does not violate copyright law, because it provides only a direction on how to find the copyrighted work; it does not reproduce it in any way. A text hyperlink may be thought of as similar to a card in a library card catalog, which merely tells you where to find a book on the shelf but does not reproduce the text of the book.

There are, however, exceptions. The key to avoiding copyright violation is not to link to content in a way that implies ownership of that content.

Deep linking. In some cases, website owners may object to deep linking — the practice of linking to a page within a website that is not the site's home page. They may object because deep linking bypasses advertising or identifying material that appears only on their home page. However, objections are rare. A good practice when deep linking is to

state the name of the website to which you are linking, if practical with a link to the website's home page. This makes the ownership of the linked material clear.

Framing. Displaying another website inside a frame, for example with your own banner over top, may be a violation of copyright because it can cause confusion as to who owns the content displayed in the frame. If you use frames for your website, link to all outside websites in the top frame or in a new window.

Inlining content. Inlining content is displaying content, such as an image, directly from one website onto another. If you display an image on your website by pulling the file directly from another website's server, you are inlining the image. Technically, you are not reproducing the image (because the file still resides on its owner's server), but you are implying ownership by displaying it within the context of your own website. Additionally, inlining images draws on the resources of the originating website's server, which may cost the owner money.

Netiquette. In the mid-1990s, it was considered good "netiquette" (i.e. "net etiquette") to ask permission before creating a hyperlink to someone else's web page. Most legal documents providing advice on linking still claim this. But the practice of asking permission has been uncommon for several years, even for deep linking. Bloggers, for example, link to one another continually; the "blogosphere" would shut down if everyone stopped to ask permission.

About Creative Commons

Material on this page is provided by Creative Commons and is available at <http://wiki.creativecommons.org/FAQ>.

WHAT IS CREATIVE COMMONS?

The idea underlying Creative Commons is that some people may not want to exercise all of the intellectual property rights the law affords them. We believe there is an unmet demand for an easy yet reliable way to tell the world “Some rights reserved” or even “No rights reserved.” Many people have long since concluded that all-out copyright doesn’t help them gain the exposure and widespread distribution they want. Many entrepreneurs and artists have come to prefer relying on innovative business models rather than full-fledged copyright to secure a return on their creative investment. Still others get fulfillment from contributing to and participating in an intellectual commons. For whatever reasons, it is clear that many citizens of the Internet want to share their work — and the power to reuse, modify, and distribute their work — with others on generous terms. Creative Commons intends to help people express this preference for sharing by offering the world a set of licenses on our website, at no charge.

IS CREATIVE COMMONS AGAINST COPYRIGHT?

Not at all. Our licenses help you retain your copyright and manage your copyright in a more flexible, open way. In fact, our licenses rely upon copyright for their enforcement. The justification for intellectual property protection (under U.S. law, at least) is the “promot[ion of] the progress of science and the useful arts.” We want to promote science and the useful arts, too, and believe that helping creators or licensors fine-tune the exercise of their rights to suit their preferences helps do just that.

WHAT PROBLEM DOES CREATIVE COMMONS INTEND TO SOLVE?

With the advent of the digital revolution and the Internet, it is suddenly possible to distribute works in a variety of formats

of a high, often professional quality; to work collaboratively across contexts; and to create new, derivative or collective works—on a global level, in a decentralised manner, and at comparatively low cost.

This presents an opportunity for an enormous and unprecedented stimulation of creativity and production of knowledge. As more and more people are interconnected and communicating, it becomes easier to obtain exactly the content one needs or want and to complete tasks and solve problems by the cooperation this interconnection enables. The convergence of technologies and media also create multiple new possibilities for creating derivatives of existing works — for example, remixes and mashups.

Another notable aspect is that globalization is not only happening on the corporate level, its effects can also be observed in the areas of science and education and in other sectors of society where new models of fruitful cooperation have appeared. The free encyclopedia Wikipedia and the free and open source software community are examples of these sociological and economic phenomena. The activities of many contributors to projects in these areas are not motivated by the desire to gain (immediate) financial benefit but by the desire to learn, to get recognition, and also to help others.

The downside of these exciting new developments and possibilities is that the new technologies can also be used to violate the rights of copyright owners as they are currently defined. In turn, major right holders have reacted to this by a fourfold strategy:

- by trying to prevent the deployment of technologies that can be put to infringing uses;
- by developing tools that enable them to manage their rights with an amount of precision hitherto unknown and unthinkable: digital rights management and technological

protection measures against unauthorised copying;

- by successfully lobbying for support of these technological measures through legal restrictions; and,
- by starting huge publicity campaigns designed to teach young people that they must keep their hands off copyrighted material — or else.

These responses are understandable, if regrettable. Our concern is that their combined effect will be to stifle the opportunities for digital technologies to be used widely to encourage creativity and for the problem-solving and collaboration discussed above. If creators and licensors have to negotiate not only complicated legal rules, but also burdensome technical barriers, many will either ignore the rules or not create.

Our alternative is to provide creators and licensors with a simple way to say what freedoms they want their creative work to carry. This in turn makes it easy to share, or build upon creative work. It makes it possible for creators and licensors to reserve some rights while releasing others. This, at its core, is our mission. Copyright gives authors certain rights. We want to make it simpler for authors to exercise those rights in ways others can understand.

WHOM DOES CREATIVE COMMONS SERVE OR REPRESENT?

Creative Commons serves creators and users of creative works and the public interest that benefits from greater collaboration using creative materials. We help people who want to license their work on generous terms, people who want to make creative uses of those works, and people who benefit from this symbiosis. We hope that teachers, scholars, scientists, writers, photographers, filmmakers, musicians, graphic designers, Web hobbyists — as well as listeners, readers, and viewers — gain from the use of our tools.