

Copyright

What is copyright:

Copyright provides the legal protection for exclusive right of authors and inventors to their own intellectual property (writings and discoveries).

Materials that can be copyrighted include but are not limited to the following:

- Literary works (fiction, non-fiction, creative non-fiction)
- Musical works including lyrics
- Dramatic works, including accompanying music
- Pantomime and choreographic works
- Pictorial, graphic, and sculptural work (art work, clip art, scripts, fonts, ect)
- Motion pictures and other audiovisual works
- Sound recordings
- Architectural works
- Computer programs
- Sewing patterns
- Fabric design
- Instruction manuals
- Policy and Procedure manuals
- Websites

Intellectual material is addressed in the United States Constitution, Article I, Section 8: *The Congress shall have Power...To promote the Progress of Science and useful Arts, by securing for limited Times to authors and Inventors the exclusive Right to their Respective Writings and Discoveries.*

Only the copyright holder has the exclusive rights to copy or display his or her work; unauthorized copying or other use constitutes infringement and those who infringe can be sued by the owner of the copyright for damages determined by the court. If you infringe upon someone's copyright protection, whether it is *innocent* or *willful infringement*, you can be sued in a federal court of law.

In order to prove infringement, the person holding the copyright is only required to prove the following:

- Duty (a copyright is held by the person taking you to court—he or she has ownership or a valid copyright exists)
- Breach (you did copy or display the copyrighted work or you made a derivative of the original)

What exactly is infringement?

Infringement is the word used to describe intellectual thievery. Copyright infringement occurs when someone or some institution uses a copyrighted work without permission from the copyright holder. Citing a copyrighted work or including a disclaimer that the work is copyrighted is not the same as getting written permission. Exceptions:

Like any good rule, there are always exceptions. The exceptions to copyright law grant a certain amount of *fair use* for purposes such as criticism, news reporting, teaching, scholarship, or research. And, there is a fair amount of leeway given to works that parody the original. The rationale for these exceptions is that these purposes provide opportunity to bring the work to the public for discussion and to possibly enhance the work through that discussion.

- *To Report or to comment* on a copyrighted work (journalists and other commentators): Commentators such as journalists are given rights to copy a *small* amount of a copyrighted work for comment or critique based on the effects they are striving to attain such as the following:
 1. Report news associated to the text
 2. Critique the work
- *To critique* a work of art (literary scholars): Criticism is considered in the realm of what is fair use, but this, too, has its limits:
 1. Provides public awareness and education
 2. Enhances the copyrighted material
 3. Is used in scholarship
 - a) that can be considered commenting on the work
 - b) that is using the work to provide understanding of a particular point
 - c) that is using the work to explain, define, describe, or refute other works
- *To create a parody* of the work: In order to create public understanding of the parodied work, greater latitude of use of the original work is afforded to those creating the parody than to those using the work in a non-parodied work.
- *To teach*: Using copyrighted works in the classroom falls under fair usage but there are exceptions to what is considered fair and what is infringement. (See Below) □ *To research*: Like teaching, research has fair use limitations as well.

Fair Use Guidelines provide courts of law with starting and ending points to determine infringement. The judges who make the decisions have freedom to parse the copyright as well as to parse the fair use.

The four factors that guide the judges are the following:

- 1) The *purpose* and *character* of the use, including whether the use is for a *commercial* or a *nonprofit* educational purpose (courts show more latitude to non-profit than to commercial usage.)
- 2) The *nature* of the copyrighted work
- 3) The *amount* and *substantiality* of the work used
- 4) The *effect* of the use on the ability of the person to make money

The purpose and character of the use or the work: Judges who determine fair usage based upon the purpose and character determine how the work was used. Judges may ask the following questions:

1. *Was the material used transformed by adding new expression or meaning?* For example, using a copyrighted source to create something new—a hybrid—versus copying the original. Scholarship can be classified as a hybrid text: your ideas are situated into the current and past literature and some of that literature is used in a way to create a new idea or a fresher means to examine something. The important elements in using direct quotes, paraphrase, or even summary of another's copyrighted work are that you *do not misrepresent the original* works or change the meaning, or base your entire scholarship on a copyrighted material.
2. *Was value added to the original by creating new information, new aesthetics, new insights, and understandings?* Value is added to copyrighted material when scholars examine the works and either substantiate the claims of the work or add to the existing knowledge by moving in new directions through the use of older scholarship.
3. *Did the person who used the copyrighted material make money?* The courts are more lenient with nonprofit than they are with commercial users. But where research and scholarship are involved, using existing scholarship as a starting point is less likely to create conflict than making others' research the focus of your work.

The nature of the copyrighted work: The nature refers to the type of work you are doing and how you are using the copyrighted work.

1. Scholarly articles that are part of a copyrighted work are less likely to create a problem for the user than a creative work. (Just because you use a scholarly article doesn't protect you from infringement; particularly if the work was not transformed.)



2. Published copyrighted works are easier to justify using than unpublished works. (Judges are less sympathetic to a person who has used an unpublished work because of the belief that the owner of the copyright should have the rights to disseminate the material first.) The amount and substantiality of the portion used in relation to the copyrighted work as a whole:
 1. The less you use, the less likely you will be accused of infringement.
 2. The amount is relative to the size of the original document and in respect to the amount needed.
 3. But, if the small amount happens to be the “heart” of the work, you are more likely to be accused.
 4. An entire picture is off limits but a thumbnail or a low resolution image is considered a lesser amount and can be seen as fair use.

The effect of the use upon the owner’s real or potential means to make money: This guideline refers to the market real or potential value.

1. Those instances where a copyright owner’s income is undermined are more prone to lawsuits. For instance, copying large portions of a book and disseminating it to the students prevents the sale of the book.
2. If you use the works in a way that the original could have been used or made (a print text changed into a digital text), you have infringed.
3. Providing digital texts on a website where others can download the texts.

Limitations to Exclusive Rights: Teach Act

Teach Act: The teach act was created to parse the fair use as it pertains to online materials and to use of copyrighted materials in a classroom. Faculty and instructors could use a limited amount of copyrighted material in face-to-face classroom settings; however, with the popularity of distance learning and the use of web enhancements for face-to-face teaching, the judicial system quickly realized that there were exceptions to how copyrighted material could be displayed and/or copied for students in online¹ courses

¹ Online courses are those courses that are not held in a brick and mortar classroom.

or even web enhanced² courses. The information below provides a guideline for what you should consider before posting information on BlackBoard or what you should or should not send through email.

- We all know that we never copy a textbook for our students
- We do not copy portions of a textbook for our students, even if we are only going to use sections of the text book
- We do not copy reference books

How do we provide supplemental readings to our students?

- In order to provide supplemental reading materials for your students, it is always best to provide a list of the materials to the librarian for reserve. Follow the link:
<http://libinfo.uark.edu/circulation/reserves.asp>
 1. The reserve staff in the library will provide a means for you to reserve the materials for your students
 2. If you are providing your own materials, he or she will provide those copies for the students

What is great about using the reserve process is that the library staff seeks permission and follows the copyright and fair use laws. In the event that you do not use the library, below are a few guidelines from the copyright law. As you can see, the laws are somewhat subjective but you will get an idea of what judges consider.

Performance or displays of a works by an instructor or student

- In the course of face-to-face teaching activities at a non-profit educational institution in a classroom devoted to instruction:
 1. Instructors and students under an instructor can perform or display a work for teaching activities only.
 2. Instructors or students under an instructor can use a (movie or audio visual work) if the copy is a legal copy. A legal copy is a *copy owned by the instructor* or borrowed from the *university library*.
 - A. Examples of illegal

² Web enhanced courses are those courses in which the students receive portions of their materials online through either email, BlackBoard, or other websites as determined by the faculty.



- a) Obviously a pirated copy is illegal and does not fall within fair usage
- b) Rental copies are also considered illegal. *Rental refers to hardcopy rentals such as videos and CDs that you rent from a brick and mortar movie rental business 2) and rental also refers to those movies that are streamlined from online movie rental business. Using YouTube videos in class or embedding YouTube into BB falls under the same conditions as using a rental video in your classroom*

Using a rented copy infringes in two ways: 1) Prevents the rental business from making profits and 2) using a rental prevents the production company from making money from the rental business (rental businesses pay the production company according to the amount of times that the movie is rented.)

- Exceptions to performance in a classroom (These are things you cannot do)
 1. When a work produced or marketed for performance or display as part of mediated³ instructional activities is transmitted over digital networks (text books, course packs, and dramatic works)
 2. When an instructor knowingly uses an illegal copy or phonorecord
 3. When the material is not directly related to the content the instructor is teaching
 4. When the material is not merely reference material
 5. When the material is provided to students that are not enrolled in the class. The material must be used for students enrolled in the course over a given time and not kept available for the duration of the semester
- Exceptions to performance in digital format
 1. There must be policies in place for copyright material at the institution in which digital copies are being provided to students (The college and university are in the process of

³ Mediated instructional activities use works that are permitted as an integral part of the course materials and are significant to the content of the course (they are not supplemental resources). These materials are controlled by the instructor and are provided to the student in a class session not the entire semester but one class session. These materials do not include the use of textbooks and other materials which are typically purchased by the student; they do not refer to activities that use, in one or more class sessions of a single course, such works as textbooks, course packs, or other material in any media that are purchased by the student.



- making a clear set of guidelines. Until then, you can always contact the contact the library at 479-5756645.)
2. When posted digitally, technological measures are in place to prevent retention of the work by the students for longer than the class session. Class sessions are usually described as being the length of time for a usual face-to-face meeting not the duration of the semester. For distance learners, the definition of class session is again subjective because the students may not all view the material at the same class session time. There should be policies available as part of your Policy and Procedures or your Syllabus for your students that outline when material will be posted and for how long so that the student will know he or she has a limited amount of time to view the material and so that the limited time can then fit into the definition of a class session
 3. Technological measures are in place to prevent unauthorized dissemination of the work by recipients to others. Students should not copy the material or send the material to friends who are not in the class
 4. That work posted is a lawful copy and not pirated or rented or even a desk copy.
 5. The digital work is of the same amount typically displayed in a live classroom session (one class period)
 6. There is no charge for viewing the work

You cannot turn print or other analog versions of works into digital formats without consent from the holder of the copyright. If you want to display a portion of an article, journal, or book that is not available in digital form, you or the librarian will have a means to contact the owner of the works and get written permission to change the form.

If you are referring your students to a website, refer the student but do not embed any part of the website into your website or BlackBoard because websites are owned by companies or individuals and can be copyrighted. Even linking without the owner's permission can be problematic.

All the information below came from the Copyright Law of the United States, Wikipedia, Mediasite: *Copyright Basics for Online Presentations*, the University of Arkansas LibGuides, and Professor Chris Sprigman's lecture on Intellectual Property Law.