

COPYRIGHT

- **Purpose of Copyright**

In general, copyright is a form of legal protection given to content creators through the assignment of specific rights to works that qualify for protection.

- **Copyright Protection in the United States**

Copyright protection exists from the time the work is created in a fixed, tangible form of expression. The copyright in the work of authorship immediately becomes the property of the author who created the work

Protected by Copyright

- Literary works (not just *The Grapes of Wrath* or *The Tipping Point*, but all works expressed in writing both in print and digital form, however formally or informally recorded)
- Computer software (considered to be literary works)
- Pictorial, graphic and sculptural works (e.g., paintings, drawings, carvings, photographs, clothing designs, textiles)
- Architectural works (e.g., buildings themselves as well as blueprints, drawings, diagrams and models)
- Sound recordings (e.g., songs, music, spoken word, sounds and other recordings)
- Audiovisual works (e.g., live action movies, animation, television programs and videogames)
- Pantomimes and choreographic works (e.g., the art of imitating or acting out situations, and the composition of dance movements and patterns, including those accompanied by music)
- Dramatic works and accompanying music (e.g., plays and musicals)

Not Protected by Copyright

- Works that have not been fixed in a tangible medium of expression (that is, not written, recorded or captured electronically)
- 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, discoveries or devices, as distinguished from a description, explanation or illustration
- Works consisting entirely of information that are natural or self-evident facts, containing no original authorship, such as the white pages of telephone books, standard calendars, height and weight charts, and tape measures and rulers
- Works created by the U.S. Government
- Works for which copyright has expired; works in the public domain

Copyright and Academia

The Copyright Act generally applies to the creation, protection and use of literary, cinematic, pictorial and many other forms of creative materials. In addition, there are some specific provisions in the Copyright Act for the use of copyright-protected materials by academic institutions, including:

- [Section 107 on fair use](#), which applies to activities such as using excerpts for illustration or comment, unexpected and spontaneous reproduction of classroom materials, and creation of parodies.
- [Section 108 on reproduction by libraries and archives](#), which applies to such activities as archiving; replacing lost, damaged or obsolete copies; patron requests for entire works; and interlibrary loans.
- [Section 109 on first sale](#), which permits the resale or lending of copies of works, providing the basis for library lending and the sale of used books.
- [Section 110 on performance and display in the classroom](#), which permits certain types of content use in the classroom and in distance education.

What Is Fair Use?

§ 107 . Limitations on exclusive rights: Fair use

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.

So What Is Fair Use?

Fair use may not be what you expect. Whether or not you are within the boundaries of fair use depends on the facts of your particular situation. What exactly are you using? How widely are you sharing the materials?

To determine whether you are within fair use, the law calls for a balanced application of these four factors:

- the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- the nature of the copyrighted work;
- the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- the effect of the use upon the potential market for or value of the copyrighted work.

Remember: Fair Use is a Balancing Test

To determine whether a use is or is not a fair use, always keep in mind that you need to apply all four factors. For example, do not jump to a conclusion based simply on whether your use is educational or commercial. You still need to evaluate, apply, and weigh in the balance the nature of the copyrighted work, the amount or substantiality of the portion used, and the potential impact of the use on the market or value of the work. This flexible approach to fair use is critical in order for the law to adapt to changing technologies and to meet innovative needs of higher education. Not all factors need to weigh either for or against fair use, but overall the factors will usually lean one direction or the other. Also, the relative importance of the factors is not always the same. Your analysis should guide you to a conclusion.

Copyright Infringement

- In utilizing any of the exclusive rights provided to the copyright holder without his permission, you may be violating or infringing on his rights under the Copyright Act. If the copyright holder has registered the infringed work with the U.S. Copyright Office prior to the infringement, the copyright holder may be entitled to compensation for his loss. Compensation may include damages, such as lost profits from the infringing activity, or statutory damages ranging from \$250 to \$150,000 for each infringing copy if the court feels that the infringement was committed "willfully."
- You may also be criminally liable if you willfully copy a work for profit or financial gain, or if the work has a value of more than \$1,000. Penalties can include a one year jail sentence plus fines. If the value is more than \$2,500, you may be sentenced to five years in jail plus fines. Criminal penalties generally apply to large-scale commercial piracy

Public Domain in the United States

The legal concept of the public domain as it applies to copyright law should not be confused with the fact that a work may be publicly available, such as information found in books or periodicals, or on the Internet. The public domain comprises all those works that are either no longer protected by copyright or never were.

Essentially, all works first published in the United States prior to 1923 are considered to be in the public domain in the United States, as are works published between 1923 and 1963 on which copyright registrations were not renewed. Materials created since 1989, other than those created by the U.S. federal government, are presumptively protected by copyright. Therefore, the likelihood that materials of greatest interest are in the public domain is low. In addition, you must also consider other forms of legal protection, such as trademark or patent protection, before reusing third-party content.

Public domain materials generally fall into one of four categories:

1. Generic information, such as facts, numbers and ideas.
2. Works whose copyrights have lapsed due to the passage of time or the failure of the copyright holder to renew a registration (a requirement that applies to works created before 1978).
3. Works created prior to March 1989 that failed to include a proper notice of copyright.
4. Works created by the U.S. federal government.

Also, in rare instances, works may be "dedicated" (donated) to the public domain.

Facts

- Flickr: 4.5 million photos uploaded each day
- YouTube: 1 hour of video uploaded every second
- Wikipedia: 22 million articles written since 2001
- 350,000 text books downloaded for iPad from the iBookstore during its first 3 days
- Nearly 20% of Kindle top 100 ebook sales were self-published titles
- In 2011 alone 1.8 Zettabytes of information were created and replicated

True or False?

“But it’s on YouTube...”

“I found it online, so I can share it.”

“It was only a paragraph...”

“It’s for my class. Fair use, right?”

“I already bought the DVD...”

“There wasn’t a copyright symbol...”

FACT: 54% of surveyed knowledge workers either don’t think or care about copyright.

Check it out

- [United States Copyright Office](#)
- [Copyright Clearance Center](#)
- [Copyright Basics Video](#)
- [Copyright on Campus Video](#)
- [Creative Commons](#)
- [Using Course Management Systems:
Guidelines and Best Practices for Copyright
Compliance](#)