**Know Your Copy Rights**

Often you can use works in your teaching without permission or fee. This chart highlights some of those situations. However, there are other circumstances where permission and/or fee are required (for example, when some types of works are included in course packs). Check with your institution’s library or legal office for information about campus copyright policies.

<table>
<thead>
<tr>
<th>What You Can Do</th>
<th>Proposed Use</th>
<th>Exhibit materials in a live classroom?</th>
<th>Post materials to an online class?</th>
<th>Distribute readings?</th>
<th>Create electronic reserves?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Public Domain Works</strong> (US Govt. and pre-1923 works, and certain other works)</td>
<td></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Works Not Copyrighted</strong></td>
<td></td>
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</tr>
<tr>
<td><strong>Your Own Works</strong> (if you kept copyright or reserved use rights)</td>
<td></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Open Access Works</strong> (works available online without license, password, or technical restrictions)</td>
<td></td>
<td>Yes</td>
<td>Link</td>
<td>Link</td>
<td>Link</td>
</tr>
<tr>
<td><strong>Electronic Works Licensed by Your Institution</strong> (depends on license, but usually permitted)</td>
<td></td>
<td>Yes</td>
<td>Link</td>
<td>Link (Most licenses also allow students to make an individual copy)</td>
<td>Link</td>
</tr>
<tr>
<td><strong>Electronic Works with a Creative Commons License</strong> (depends on license, but usually permitted; if not, LINK)</td>
<td></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Copyrighted Works</strong></td>
<td></td>
<td>Yes, if meets either TEACH Act or Fair Use standards. If not, LINK or seek permission.</td>
<td>Yes, if meets Fair Use standards. If not, LINK or seek permission.</td>
<td>Yes, if meets Fair Use standards. If not, LINK or seek permission.</td>
<td>Yes, if meets Fair Use standards. If not, LINK or seek permission.</td>
</tr>
<tr>
<td><strong>Other Works</strong> (when none of above apply)</td>
<td></td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Brought to you by your institution’s library and

**ASSOCIATION OF RESEARCH LIBRARIES**

www.arl.org

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USING COPYRIGHTED WORKS IN YOUR TEACHING—FAQ:
Questions Faculty and Teaching Assistants Need to Ask Themselves Frequently

by Peggy Hoon, J.D., Visiting Scholar for Campus Copyright and Intellectual Property, Association of Research Libraries

Introduction
You don't need a lawyer to answer many of your common copyright questions. What is needed, however, is for your decision about using a copyrighted work to rest solidly on a reasonable, good faith analysis of relevant circumstances. Such an effort is important because it is the right thing to do and because the US Copyright Act provides relief from monetary statutory damages to employees of non-profit educational institutions, acting within the scope of their employment, who base their copyright decision on a reasonable, good-faith evaluation.

This FAQ is arranged around a sequence of 6 overarching questions that collectively represent a good-faith analysis for circumstances that are common in teaching at most universities.

Ask yourself:

1. Is the work copyrighted? If not, no further analysis is needed. If yes or if you don't know, read on.

2. What is the setting for the class where I want to display or hand out a copy of the work — is it in a face-to-face classroom or in an online course? The law allows different uses in different settings.

3. Is the work covered by a license, such as those governing my library’s electronic journals and databases?

4. Is there a specific provision in the copyright law that supports my proposed use without seeking prior permission from the copyright holder?

5. Does the fair use provision of the copyright law justify my proposed use?

6. Do I need permission from the copyright holder for the use I propose?

The information below will help you explore these questions and reach an informed conclusion. When applied to a specific set of circumstances, the questions and responses will be interrelated so (if you are still reading after question #1) you are encouraged to review the entire part of this document relevant for your classroom setting.

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authorized by him or her, can give permission. Do you believe the entity giving you permission fits one of these categories?

Fair use is the only copyright provision that allows you to make a copy to display or distribute a copyrighted work that you find on Web sites. In order to lawfully make use of such works, without obtaining the permission of the copyright holder, you must decide whether your use is a fair use (see question #5, below) or direct students to a link to the work.

b. What if I created the work?

Unless you wrote the work under contract as a work for hire, you are the author and the initial copyright holder. If, however, you have transferred your copyright to another entity (in writing), without retaining any use rights for yourself, you are no longer the copyright holder and have no special privileges to use the work.

To keep your copyrights, the next time a publisher’s agreement proposes transferring exclusive rights from you to them as a condition of accepting the item for publication, consider retaining the rights you need to place your own work in an open archive and sharing it with your students. The SPARC Author Addendum www.arl.org/sparc/author/ is one means of securing these rights.

c. What if a student created the work?

Students hold the copyright to the works they create, such as their papers, projects, theses, and dissertations. If you wish to use their work, absent any relevant university policy, you will have to treat it like any other copyrighted work.

2. What is the setting for the class where I want to display or hand out a copy of the work — in person or online?

The law allows different uses in different settings.

- If the use is in a face-to-face classroom, continue reading in Part I.

- If the setting is to be an online course or course management software, jump to Part II of this document.

- If your class uses a combination of both settings, review both Parts I and II of this document and consider which setting offers the best opportunities for the use you have in mind.
Under section 110(1), you are allowed to show all or part of any of these copies in your face-to-face classroom as long as it is for the educational purposes of your class (not just entertainment). In particular, you can show a rented movie as long as you have not entered into a license or agreement with the rental store that would prohibit such use.

b. *The copy I have is VHS and is getting worn out. Can I*
   - digitize it and show that?
   - ask the library to digitize either my copy or theirs for showing in class?

There is nothing in section 110(1) that addresses “reproduction” which is what migrating your VHS copy to digital format would be. In order for you, the professor, to digitize your VHS, you would have to rely on fair use (see question #5, below), which may justify digitizing portions of the work, but probably not the entire movie. If the work is available in digital format, buy it (or ask your library to buy it) and you can show that.

If the work is not available in digital format for you or your library to purchase, your library can digitize its VHS copy as long as it can be reasonably described as deteriorating. The library is allowed to do this pursuant to a different section of the Copyright Act.

c. *Can I display a copyrighted picture, image, graph, chart, text, etc. to my class?*

Yes, you may display these kinds of copyrighted works in your class. However, what you need to consider is how you obtained the copy of the image etc. that you want to display. Are you using slides (35 mm or digital) you made from
   - printed books or journals?
   - the library’s electronic databases and journals?
   - works you found on a Web site?

Reproducing a picture, image, graph, etc. from printed works or works found on the Web, in whatever format, is not covered in section 110(1). Your reproduction must be considered a fair use (see question #5, below) or you need to seek permission. There is often a strong fair use argument in favor of this practice.

Reproducing works obtained from the library’s electronic databases and journals, on the other hand, is governed by the terms of the campus license. Consult your library to be confident this kind of use is permitted by the license.

For works found on the Web, consider accessing the work from a “live” projection of the site during class.

d. *Can I play music to my class?*

Yes.
6. Suppose I decided to ask for permission anyway?

If you wish to pursue permission for your use, you will need to identify and locate the copyright holder, a task often easier said than done. Sample letters and suggestions can be found at this Permissions Guide http://www.lib.ncsu.edu/scc/copyright/ worksheet.pdf. Allow yourself plenty of time and patience. See below if you can’t reach a copyright holder.

a. What if they say no but now I believe fair use or a specific provision of the copyright law applies? Am I disadvantaged because I asked?

Previous payment of a fee or even outright denial of permission does not preclude you from exercising your rights under the Copyright Act. You can still employ an appropriate specific provision or the fair use provision and there is no presumption against you for having asked permission.

b. What if they don’t respond?

Lack of response does not translate into a passive grant of permission to use. If your proposed use exceeds all provisions of the law, including fair use, you probably need to direct your students to a link to the work, find another work to use, or modify your proposed use to fit within fair use.

c. What if the work is out of print? Is that the same as out of copyright?

“Out of print” is not the same as “out of copyright.” An out of print work may still be protected by copyright and should be approached the same as a work still in print.

d. What if I can’t find current contact information for the copyright holder? For example the publisher is out of business or the author is deceased.

These situations present the problem of a work whose copyright holder cannot be located, despite reasonable efforts. The US Copyright Office has recognized this problem, calling such works “orphan works.” Much work is currently being done to create an exemption in the law that would encourage uses of such works by mitigating the liability risk.

At the present time, however, educators and libraries must make individual decisions concerning their use of such works, including evaluating the risk of liability. Those who proceed with their use should document and preserve their efforts to locate the copyright holder.
decide whether your use is a fair use (see question #5, below) or direct students to a link to the work.

b. What if I created the work?

Unless you wrote the work under contract as a work for hire, you are the author and the initial copyright holder. If, however, you have transferred your copyright to another entity (in writing), without retaining any use rights for yourself, you are no longer the copyright holder and have no special privileges to use the work.

To keep your copyrights, the next time a publisher’s agreement proposes transferring exclusive rights from you to them as a condition of accepting the item for publication, consider retaining the rights you need to place your own work in an open archive and sharing it with your students. The SPARC Author Addendum www.arl.org/sparc/author/ is one means of securing these rights.

c. What if a student created the work?

Students hold the copyright to the works they create, such as their papers, projects, theses, and dissertations. If you wish to use their work, absent any relevant university policy, you will have to treat it like any other copyrighted work.

2. What is the setting for the class where I want to display or hand out a copy of the work — in person or online?

The law allows different uses in different settings.

- If the setting is to be an online course or course management system, continue reading this Part II of the document.

- If the use is in a face-to-face classroom, refer back to Part I.

- If your class uses a combination of both settings, review both Parts I and II of this document and consider which setting offers the best opportunities for the use you have in mind.

3. Many copyrighted works are accessed through a campus license that can override copyright. How do I know if the work I want to use is covered by such a license?

Asking and answering this question is just as important in the online world as it was in the traditional classroom setting, particularly since licenses may prohibit reposting of materials.

You are most likely to encounter licensed works via your campus library’s electronic journals and databases. Libraries vigorously negotiate licenses for such materials and
• directly and materially related to the teaching content

The work must be lawfully made and not excerpted from a product that was specifically designed and marketed for use in an online course.

Furthermore, there are three additional requirements:

• You must password protect or otherwise restrict access to your online class Web site to enrolled students, and
• You must reasonably prevent your students from being able to save or print the work, i.e., control the "downstream" uses, and
• You must include a general copyright warning on your class Web site.

If the above circumstances and requirements are met:

a. Can I show part or all of a copyrighted movie?
   • Using my own copy?
   • Using the library's copy?
   • Using a copy I rented from a store?
   • Using a copy I taped from TV?

Can I digitize a VHS movie?
Can I make a DVD of all the clips I use and distribute it to the class?

In order to fit within the 110(2) provision, you can use a "reasonable" portion of a movie or a piece of music. (Note: this differs from the face-to-face classroom where you may play the entire work.) The currently acceptable "downstream" control is to use streaming technology. The copy you excerpt from must be lawfully made and not specifically designed and marketed for online courses. For a discussion of whose copy you may use, see Part I, question 4b, above.

Under 110(2), you may digitize the reasonable portions you intend to use from a VHS or other non-digital format, as long as there is no digital version available to the institution or the available digital version is encrypted.

Section 110(2) would not permit you to make a DVD of your online clips to provide your students with their personal copy because you cannot control the uses made after the class session. You should consider whether this would be permitted as a fair use.

b. Can I display a copyrighted picture, image, graph, or chart in my online class?

Yes, as long as it is a work you would have shown in a face-to-face classroom setting and you comply with the other general 110(2) requirements listed above. This provision is very helpful to classes that use large numbers of images, such as art history. The challenge lies in controlling the downstream uses of the material, e.g., preventing your students from saving or printing the works. North Carolina State University has
j. What are mediated instructional activities (as defined in section 110(2), the TEACH Act)?

Mediated instructional activities are activities that use such [permitted] works
- as an integral part of the class experience
- under the control or actual supervision of the instructor
- in a manner analogous to performances and displays in live classroom settings.

According to the Senate Report accompanying the TEACH Act, such activities must use the works as part of the course rather than ancillary to it. Thus the TEACH provision would not cover “student use of supplemental or research materials in digital form, such as electronic coursepacks, e-reserves, and digital library resources.”

For additional help with applying Section 110(2), the TEACH Act, see The TEACH Act Toolkit at http://www.provost.ncsu.edu/copyright/toolkit/.

5. What is fair use and when would I need to rely on it for my online classroom uses?

The fair use provision of the copyright act (section 107) is always potentially available as an option, even if another specific provision applies. What is it?

Fair use allows limited use of copyrighted material without requiring prior permission from the copyright holder. The statute lists four factors to be weighed when analyzing the proposed use in order to determine whether it is a fair one. Consideration of all factors is required although all factors do not have to be in favor of a use to make it a fair one.

A fair use analysis is necessarily a fact-driven one. Each unique set of facts regarding a proposed use leads to its own reasoned conclusion. Reasonable individuals may come to different decisions concerning the same set of facts, but the operative word is “reasonable.”

The four fair use factors are as follows:

1. The purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes;

2. The nature of the copyrighted work;

3. The amount and实质性 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.

For assistance in analyzing these factors relative to your proposed use, see the Fair Use Considerations Worksheet. http://www.lib.ncsu.edu/scc/copyright/worksheet.pdf.
Using Copyrighted Works in Your Teaching—FAQ:
Questions Faculty and Teaching Assistants Need to Ask Themselves Frequently