

# SWOCC Copyright Guide

Welcome to the SWOCC Copyright guide. This guide is intended to provide information and guidance to help you determine if the uses you would like to make of copyrighted materials are allowed by law and to direct you to support at the college. ***Nothing on this guide should be construed as legal advice.***

## Copyright Basics

- **Most works are protected by copyright**  
Almost all creative and intellectual work is protected by copyright. Remember that facts are not subject to copyright.
- **Copyright is automatic**  
Works do not need a copyright notice posted or registered to be protected by copyright. This means that everything from a novel to a napkin doodle has full and automatic copyright protections.
- **Copyright lasts a long time...**  
Works are protected for the life of the author, plus seventy years. If a work was “[made for hire \[PDF\]](#)” it is protected for 95 years from publication or 120 years from the creation of the work (whichever is less). The rules are different for works made before 1978 and incredibly complicated. Try this [copyright slider](#) or the [Copyright Genie](#) from the [Copyright Advisory Network](#) when in doubt.
- **...but not forever**  
Works with expired copyright pass into the public domain and are available to be used in whatever way you would like. Also not protected by copyright are works created by the US government (and some states), facts, ideas, and methods.

## What Copyright Does and Doesn't Protect

### The Rights of Copyright

Copyright is seen as a bundle of rights. These rights include:

- Make copies of the work
- Distribute copies of the work (by selling, renting, lending, or giving it away)
- Perform or display the work publicly
- Make derivative works, like translations, adaptations, and reinterpretations

Because these rights are imagined as a bundle, the owner of the copyright can give away, sell, or otherwise license some or all these rights to others (as when an author negotiates a contract - they may give the publisher the right to copy and distribute the work but not make future derivative works, for instance).

## What Copyright Protects

Copyright only applies to the following kinds of works:

- literary works
- musical works, including accompanying words
- dramatic works, including accompanying music
- pantomimes and choreographic works
- pictorial, graphic, and sculptural works
- motion pictures and other audiovisual works
- sound recordings
- architectural works

This list encompasses most kinds of creative or intellectual expression. Works must also be "fixed in a tangible medium of expression". Unfixed works like improvised music, speeches, or dances are not protected by copyright.

Remember: copyright is not designed to reward hard work but, rather, to foster creativity. Works do not qualify for copyright protection just because they took a lot of effort to complete. Works must be an original expression to qualify for copyright protection.

## What is NOT Protected by Copyright

- procedures, processes, systems, methods of operation (these are protected by patents)
- ideas, concepts, principles, or discoveries
- titles, names, short phrases, and slogans; familiar symbols or designs, mere variations of typographic ornamentation, lettering, mere listings of ingredients or contents
- other unoriginal or unfixed works

## Fair Use

### Overview

Fair use is the flexible and dynamic exception to copyright law that serves to balance the rights of creators with the public interest in using copyrighted works to advance education, to comment and criticize, and to make new creative content. Its flexibility is often somewhat intimidating or frightening. When considering fair use, it is very rare to know with certainty that a use is fair: only that it is more or less likely to be fair. It can be frustrating that the law does not give us any clear answers regarding amounts we can use and know that we are "safe". Fortunately, there are ways of understanding the

purpose and function of fair use that can help us feel more confident about evaluations and maybe even come to appreciate fair use for its flexibility.

## The Four Factors

Fair use is determined by considering four factors of that use. **No one factor is determinative**; each factor must be considered and weighed. Usually after considering each of the four factors and weighing how much each fact of your situation favors or disfavors fair use, you are left with an overall sense that your use is "probably fair" or "probably not fair". Really, only the courts can offer us definitive answers.

### Purpose and Character of the Use

How do you propose to use the work? Purposes that favor fair use include education, scholarship, research, news reporting, criticism, and commentary. Non-profit purposes also favor fair use. Commercial uses weigh against fair use.

The biggest mistake we see educators making is mistaking their educational *context* for an educational *purpose*. If you create a class website or presentation and put a pretty picture on it primarily for decoration or visual interest, this is very different from an image about which you are providing direct instruction.

### Nature of the Copyrighted Work

Remembering copyright is designed to protect works of creative expression, the more highly creative the work you want to use is, the more fair use is weighed against. This is, of course, subjective. We might say, in general, a novel would be more highly creative than a work of non-fiction but, of course, there is a huge range of creativity within the huge category of "non-fiction". Unpublished works would also be less likely to qualify for a fair use than published works.

### Portion Used

This is the one where everyone seems to want to see some percentage or number of pages that will always be fair. There is no such number. The goal of fair use is to make available a wide and unpredictable set uses. Could a legislator predict in advance that a future satirist would never need more than ten percent of a work to make their point? Of course not.

As a general principle: using less of a work is always more likely to be fair than using more. The smaller the portion used is relative to the whole, the more likely the use is to be fair.

It is also true, however, that using an entire work can be and often is a fair use.

Another guiding principle: using only the portion of a work that is necessary to meet the educational (or other fair) purpose you have in mind is more likely to be fair than using more than is necessary. For example, if you are considering copying a 4-page article for your class because the author makes an argument, you would like to discuss but that argument could be well understood by reading just a couple of paragraphs of the article, copying just those paragraphs would much more strongly favor fair use than copying the whole article.

The more the portion you want to use represents the "heart of the work", the less likely your use is to be fair. This can be a very difficult one to assess.

## Effect of the Use on the Potential Market

The most useful way to think about this factor is to ask if your use could substitute for the original in the marketplace. Would your use substitute for sales either to your students or to anyone else? A confusing piece here is the permissions market. A strong market exists in selling permissions to use content, especially things like book chapters and journal articles. It can be easy to say "Oh, of course my student won't be subscribing to *Professional Journal X* so copying an article certainly doesn't substitute in the market". But it would substitute for that secondary permissions market. We do not at this time have truly conclusive case law to guide us in thinking about the permissions market, but it does seem very likely that where there is a viable permissions market for the material you want to use, this would weigh against fair use.

## A Balancing Test

Once you have looked at all the factors, you can assess if, taken as a whole, your use seems likely to be fair or likely to be unfair. No single factor is determinative, and you could "strike out" in three categories but have the remaining category weigh so strongly in favor of fair use that, overall, your use is fair. We discuss this in more depth below in "Thinking about Fair Use: Transformativeness".

## Checklists and Best Practices

It is important to remember that using a checklist will never let you determine with certainty whether a use is fair. It can, however, help you organize and, importantly, document your thinking. It is a great idea to use and print a fair use checklist whenever you are dealing with a tricky fair use situation. Take the time to document your thinking in case of a future challenge! Other useful tools include this [Fair Use Fundamentals](#) infographic from the [Association of Research Libraries](#), and the [Fair Use Evaluator](#) from the [Copyright Advisory Network](#).

- [Fair Use Checklist - Ohio State University](#)

This checklist allows you to check off the factors at play in your analysis, as well as add text that explains your thinking, and then emails you your results. This is a great thing to keep for your records.

- [Using a Fair Use Checklist](#)

Columbia University provides excellent context for why and how to use a checklist and provides a checklist for your use.

- [Codes of Best Practice](#)

The Center for Media and Social Impact has worked with a wide variety of user communities to document the best practices for applying fair use in those communities.

## Thinking About Fair Use: Transformativeness

In 1994 the Supreme Court unanimously found that 2 Live Crew's song "Pretty Woman" did not infringe the copyright in Roy Orbison's song "Oh Pretty Woman" even though the parody song drew from the "heart" of the work of the original, used large amounts of a creative work, was a commercial use, and had negative effects on the market. It would seem in this case that all four factors would weigh against 2 Live Crew. The court found the use fair, however, because 2 Live Crew's use was *transformative*. This idea had been present in legal scholarship for some time, but it was this case ([Campbell v. Acuff-Rose Music](#)) that cemented the concept. The Court finds that when source work is used in new and unexpected ways, the use is more likely to be fair. Some people view "transformativeness" as a kind of "fifth" fair use factor, other see it as a way of understanding the interplay between the four factors.

In a sense, we can view "transformation" as the goal of fair use. Fair use exists to give citizens the ability to take existing creative works and use them to create new knowledge, understanding, and art. We find, when evaluating fair use, it is helpful to keep "transformativeness" in mind as we look at the picture that our four-factor analysis gives us.

## The Classroom Guidelines

*"I'm sure I read somewhere that 10% of a work is always fair!"*

*"Isn't it okay if I use something one term but then I have to get permission the next term?"*

We know from looking at the four factors of fair use that no specific amounts are dictated and there is nothing in there about 'spontaneity' or 'cumulative effect' (all that "one term free" business). So why do so many of us remember hearing these things somewhere along the line? These concepts derive from [negotiated guidelines](#) agreed to by the Association of American Publishers and The Author's League of America following the passage of the 1976 copyright law (which first codified fair use). The Guidelines are an agreement between private parties intended to provide a kind of "safe harbor". That is, the publishers were essentially saying that the guidelines represent, in their opinion, an interpretation of the minimum standards of fair use that they could live with and if educators operated within that "safe harbor" they would not be liable for infringement. The guidelines specifically state that they are meant "to state the minimum and not the maximum standards of fair use under section 107". Despite this, many groups including the American Association of University Professors (AAUP) objected to the Guidelines as they feared they would come to be seen as, in essence, a ceiling rather than a floor. That is, to express the limits of fair use rather than the minimum. This fear has most certainly proven to be well-founded with many institutions enshrining the Guidelines as policy. Certainly, the Guidelines are widely conflated with the actual law.

The Guidelines can be helpful, especially when regarded as the "floor" they were intended to be. Remember that there is no real guarantee that the Guidelines do represent a "safe harbor" as they do not carry the force of law. But, more importantly, remember that the very nature of fair use is that does not attempt to anticipate all future potential uses and describe in advance if those uses are fair.

# Teaching with Copyrighted Materials

## Using Copyrighted Materials

When trying to determine if you can use given material, try to think systematically about your use, the copyright status of the material you want to use, and the exceptions to the copyright law that might apply to your situation.

Start any analysis with two very basic questions:

1. **Does my use exercise one of the exclusive rights of copyright?** If not, copyright does not come into play. For example, if you are simply linking to legal material available freely on the web or in a licensed library database.
2. **Is the material I want to use covered by copyright?** Most material is, but if the material is 1) in the public domain, 2) belongs in a category unprotected by copyright as described above, or 3) was produced by the Federal government, you are probably clear to use it.

Once you have determined that copyright will come into play, figure out if your use is permitted by an existing exception (like fair use, the [Classroom Use Exemption](#), or the TEACH Act). If so, you can use it legally. When thinking about these exceptions it can be useful to keep in mind that in the face-to-face classroom the two exceptions that are likely to apply are the Classroom Use Exception and fair use. In the online classroom, most often you will be looking to fair use, though in some cases the TEACH Act will apply.

If you have determined that your use would exercise one of the exclusive rights of copyright, the work is copyrightable and still under copyright and no exception applies to your use, at that point you will need to seek permission. The [Copyright Clearance Center](#) is an excellent resource for this. Remember, the library is also happy to talk with you and help you think this through!

## What Can I Do with...?

TYPE	FACE TO FACE	ONLINE
Article	<p>If the library has an electronic version of the article, use a persistent link to the article (eg. in your MLL and/or your syllabus).</p> <p>If the article is available legally on the web, link to the article.</p> <p>If not, you will need to conduct a fair use analysis before scanning or copying the article for your class.</p>	<p>If the library has an electronic version of the article, use a persistent link to the article (eg. in your MLL and/or your syllabus).</p> <p>If the article is available legally on the web, link to the article.</p> <p>If not, you will need to conduct a fair use analysis before scanning or copying the article for your class.</p>

<p>Book Chapter</p>	<p>Place print copy of a book on reserve at the library.</p> <p>If the library has the ebook, put a persistent link to the ebook in your readings list.</p> <p>If not, you will need to conduct a fair use analysis before scanning or copying the chapter for your class.</p>	<p>If the library has the ebook, put a persistent link to the ebook in your MLL.</p> <p>If not, you will need to conduct a fair use analysis before scanning or copying the chapter for your class.</p>
<p>YouTube</p>	<p>Linking to a YouTube video is permitted. If embedding code is provided, it is fine to embed. Be sure to attribute the creator. Avoid any video that you suspect is not a legal copy.</p>	<p>Linking to a YouTube video is permitted. If embedding code is provided, it is fine to embed. Be sure to attribute the creator. Avoid any video that you suspect is not a legal copy, not least because it could be taken down by YouTube at any time.</p>
<p>DVD</p>	<p>The Classroom exception permits you to show DVDs without limitation, provided that the DVD is legally made and acquired.</p>	<p>Streaming a DVD in an online class will need to be permitted by the TEACH Act or be a fair use. The TEACH Act specifically forbids copying an entire DVD. Fair use could conceivably permit it, but a very rigorous analysis and justification would need to be provided.</p> <p>Portions necessary to serve your pedagogical purpose may be streamed to students. You will need to think through your purposes for including the content from the DVD.</p> <p>The TEACH Act specifically allows, "The performance of a nondramatic literary or musical work or <b>reasonable and limited portions</b> of any other work"; the DVD must be a legal copy and the content cannot be mediated educational programming. If, "The performance or display is made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of the systematic mediated instructional activities."</p>

Licensed streaming content from library or distance learning	Yes! SWOCC has licensed content you can embed in your classes from <a href="#">Films on Demand</a> . Please contact the library to set up an account if you are off campus. You can also find a help guide on MLL: eLearning/Integrating videos in your course/How to use Films on Demand.	Yes! SWOCC has licensed content you can embed in your classes from <a href="#">Films on Demand</a> . Please contact the library to set up an account if you are off campus. You can also find a help guide on MLL: eLearning/Integrating videos in your course/How to use Films on Demand.
Streaming from Netflix, Amazon Prime, Hulu, etc.	No. Generally, subscription streaming services' Terms of Use specify personal use only.	Students must use their own personal subscriptions to these services.
Images	Showing legally acquired images in the classroom is permitted. If you post a slide deck to MLL, consider removing any copyrighted material unless you have done a fair use analysis and determined that it is likely to be fair. Consider using the library's licensed content or Creative Commons licensed content online.	Creative Commons licensed, public domain, or library-licensed material can be used.  Otherwise, you will need to conduct a fair use analysis.
Figures, charts, graphs	Permissible to use, with attribution.	Permissible to use, with attribution. If the chart or graph is creative in its display of information (as opposed to something that anyone could reproduce exactly given the same data), conduct a fair use analysis.
Music from a CD	Okay to use.	See "DVD" above.
Live music performance	Yes, permitted by the classroom exemption.	N/A
Sending content via email	It is better to send a link than to send an attachment. Much of the details listed above for posting things online will be similar with email but posting online on MLL will make any fair use argument stronger because it is password-protected.	It is better to send a link than to send an attachment. Much of the details listed above for posting things online will be similar with email but posting online on MLL will make any fair use argument stronger because it is password protected.
Student work	Get permission from the student in writing and keep that documentation. Both copyright and FERPA apply.	Get permission from the student in writing and keep that documentation. Both copyright and FERPA apply.



# TEACH Act

## The TEACH Act: How Did We Get Here?

"Why don't the laws that apply in the physical classroom apply in the online classroom?". It's hard to answer that question without editorializing about the legislative history of the TEACH Act but the short answer is that, as distance education began to become commonplace there was an effort to update the [Classroom Use Exception](#) that we as educators have always relied upon to give us broad latitude to display and perform copyrighted materials in our classroom to apply to the distance education classroom. There was great fear on the part of content owners that digital copies of their works in online classrooms would lead to wide scale piracy. Thus, the TEACH Act was born. TEACH is nice, when it works, because it does give us the clarity to know that our use is legal. But it imposes much greater restrictions on the online instructor than are felt by the face-to-face instructor.

Keep in mind, the only part of the law that really differs for the distance classroom vs the face-to-face classroom is the Classroom Use Exception. Online instructors still benefit from fair use and, in many cases, we can make fair uses of materials that would not meet the extensive requirements of the TEACH Act.

## Using the TEACH Act

TEACH has a laundry list of criteria that must be true to make use of its protections. Many you can assume to automatically be true for classes you are teaching at SWOCC. These include:

- You are teaching at an accredited, nonprofit educational institutional or governmental body.
- You have an institutional policy that addresses the use of copyrighted materials and promotes compliance with U.S. copyright law.
- You as the instructor are individually responsible for copyright compliance.
- Your institution provides educational resources that accurately describe copyright rights and responsibilities.
- Your institution has implemented reasonable measures to prevent retention of the works for longer than the class session.
- Your institution has implemented reasonable measures to prevent unauthorized further dissemination by the recipients.
- There is a notice accompanying the work notifying students that the work may be protected by copyright.

The following are the criteria that you will need to actively evaluate if you want to make use of TEACH:

- If the work is a non-dramatic literary or musical work, you can post entire works.

- If the work is a dramatic literary or musical work, you can only post "limited and reasonable" segments.
- The work is an integral part of the class session.
- The work is part of systematic mediated instructional activities. This means you will facilitate the students' use of the work.
- The work is directly related and of material assistance to the teaching content.
- You will display an amount comparable to that which is typically displayed during an in-person classroom setting.
- You will only make the work available to students during the relevant instructional module. It should not be available for the entire length of the course.
- The work will only be available to students who are enrolled in the course.
- The work was lawfully made and acquired.
- The work was not created as a digital educational work. If it was, the TEACH Act does not apply.
- The work is not a textbook, course pack, or other commercial educational work. If this is a title students would otherwise be required to purchase for your class, it will not be covered by the TEACH Act.
- There is no reasonably priced streaming version of the work available to the institution.

If your use and material meet all the criteria above, congratulations! Your use is protected by TEACH. TEACH is great when it applies because it gives you the peace of mind that comes with knowing in clear terms that you are not making an infringing use. The [Exceptions for Instructors](#) tool developed by the [Copyright Advisory Network](#) can help you navigate these questions.

If your use does not meet all the above criteria, do not despair! Your use might still be a fair use. Fair use does not always offer us the same peace of mind, but it makes up for it by being a flexible and dynamic doctrine designed to support a wide variety of beneficial uses of copyrighted material.

## Creative Commons & Public Domain

### Creative Commons and Openly Licensed Materials

[Creative Commons](#) licenses are a way (though not the only way) for owners of copyrighted material to, in essence, approve certain types of uses of their work in advance. This helps avoid the lengthy process of seeking permissions. Creative Commons licensed materials (except those explicitly licensed with a "Public Domain" license) are still copyrighted and the creator of the work still owns that copyright.

The purpose of this licensing is to offer a flexible and efficient mechanism for content creators to allow their materials to be used in certain ways without the burden of the permissions process. Typically, CC

licenses require attribution at a minimum. Copyright holders can choose licenses that allow (or prohibit) commercial uses, adaptations, and CC-licensure on derivative works.

Many teachers and content experts author learning materials to support their classes. They can choose to add a CC license to their work and share them with other educators. We refer to these materials as Open Educational Resources (OER). [Open Oregon](#) is an excellent place to learn more about OERs and their positive effects on textbooks affordability, equity, and student success. In addition to professional development and grant opportunities, Open Oregon maintains a [resource list](#) of all reported OER adoptions in Oregon colleges and universities. The [Open Textbook Library](#) and the [OER Commons](#) are also excellent places to find openly-licensed materials for your courses.

Are you interested in creating CC licenses for your own work and publishing them as an OER? The first thing you must do is determine if you own the copyright to the material including any images and media. [This guide](#) from Sonoma State University Library provides multiple resources for searching openly licensed images.

Next, choose an appropriate CC license. You can read more about the license options on the Creative Commons website [here](#), or you can use their [License Chooser tool](#). We recommend the [CC-BY license](#), which is the attribution-only license. This license is the most open and has the least possibility of having downstream effects that prevent users from using and adapting your materials. There are, though, many issues at play when choosing a license and you should make choices based on your situation. We do strongly advise against selecting a "No Derivatives" license. This license term prevents downstream users from adapting your work in any way, thus greatly reducing its usefulness as an OER.

Finally, you must add the CC license you selected to alert others on how they may use your material. The Creative Commons site and the License Chooser tool provide information about [marking your work](#) so that others will know it is available for use under Creative Commons. Now you are ready to host your work for the world to use!

## Copyright Term and the Public Domain

Some users say, "I only teach with openly-licensed/public domain materials", but they might be confusing the terms with items that are merely freely available on the internet. These are not the same thing. Remember that most content on the web, though freely available, is protected by copyright. Copyright terms last a long time now. Copyright laws changed several times throughout the 20th Century, and some of those changes were retroactive. It can be challenging to figure out if a given piece of content created in the 20th Century is in the public domain or not.

If the content was created/published before 1923, it is in the public domain.

For material published after this date, it gets complicated. This chart, [Copyright Term and the Public Domain in the United States](#), provides detailed information about all of the possibilities. This [copyright slider](#) from the [Copyright Advisory Network](#) provides simplified information for the most common scenarios.

Materials in the public domain may be used without limitation.

# Works Created by the Federal Government

Works created by the Federal government (and some state governments, but not Oregon) are not subject to copyright. This applies to works created by employees of the United States government in the course of their duties. Unfortunately, even this seemingly simple idea has a lot of complexity when you start examining it:

- Works produced by contractors or freelancers employed by the government are likely to be copyrighted.
- Works produced by some agencies (eg. the Post Office) may be subject to copyright.
- Government websites regularly feature art and imagery that were purchased or licensed by the government. Do not assume that because it is on a government website it is not subject to copyright.
- The government can own copyrights that are transferred to it.
- Logos of government agencies might be subject to trademark law even though they are not copyrightable.

State laws vary. Harvard has [a great resource](#) for helping to figure out the relevant laws in each state.

## Note-sharing Websites

### What are Note-Sharing Websites? Why are They an Issue?

There are several commercial note-sharing or course-sharing websites on the Internet. For example, Academia.edu, Chegg, Course Hero, OneClass, Research Gate, and StuDocu. These sites allow students to share study materials such as their own lecture notes. Unfortunately, students are posting materials provided by their professors or sharing their previous assignments and tests. This is considered Academic Cheating and is a violation of the Laker Code in the SWOCC Student Handbook. These websites provide incentives such as monetary reward for students to post content that would increase user visits to these sites. There have been reports by SWOCC faculty that their course materials are posted on these sites without their consent.

There are several problems associated with SWOCC students posting course materials to these websites or on the Internet:

- The content in some cases (e.g., exams) can help other students to cheat, and this is a violation of the Laker Code in the SWOCC Student Handbook.
- It is a copyright infringement to copy and share a work unless there is permission from the rights holder, or the use is permitted by the copyright law.
- Improper use of resources available in MLL may violate other policies at SWOCC.

Students do not always understand when their use of these sites might be a violation of policy or ethically unsound.

## What can Faculty do to Educate Students about these Sites?

It is helpful to educate students on the ethical and legal uses of your course materials. Education may help prevent students from posting course materials on the internet; students may have greatly varied schema about intellectual property! Here are some strategies:

### 1) Talk to your students about the course materials

At the start of a term, mention to your students that the course materials provided by you or posted on MLL are for their own educational use and should not be shared on the Web or externally.\*

*\*It is up to a faculty's discretion on whether material can be shared outside of class. For third-party material, there may be copyright implications related to distribution.*

### 2) Include a © symbol and/or statement on the course materials

Add the copyright symbol, your name and date that you created the material. You may also include a statement to clarify what students can and cannot do with your material. Here is a suggested statement:

*"The materials provided in class and in MLL are protected by copyright. They are intended for the personal, educational uses of students in this course and should not be shared externally or on websites such as Course Hero or OneClass. Unauthorized distribution may result in copyright infringement and violation of SWOCC policies."*

### 3) Cite any third-party sources used in the course materials

Provide attribution to the sources you are using to demonstrate good scholarly practice and academic integrity to your students. Talk to your students about your ethical decision-making when it comes to the use of third-party sources.

### 4) Provide information resources on note-sharing sites and other copyright issues

Here are some resources:

- Video on "[Note-Sharing Websites](#)" from Sheridan Library in Canada.
- [Student information on note-sharing websites](#) on this copyright guide.

Feel free to post these links on your MLL course pages to share with students.

You can also invite the librarian to speak to your class or to create custom course materials on these topics for your class.

### 5) Suggest learning support services available

In addition to seeking coursework help from you and other professors, refer students to:

- [SWOCC Library](#) for research and citation help
- [Tutoring Center](#) for learning and writing support

## How can Faculty get their Materials Removed from these Sites?

Many note-sharing websites have an online form for authors to request removal of their materials. In the US, where many of these sites are hosted, online service providers are required by legislation to remove a copyrighted work upon request of the rights holder and provide a notice to the user that uploaded the work.

The links below take you to the online forms of several note-sharing websites to request content removal:

- [Course Hero](#)
- [OneClass](#)
- [StuDocu](#)

## Students

### Copyright and Plagiarism

The relationship between copyright and plagiarism can seem complicated.

Plagiarism is about using creative work without *attribution* ("giving credit"). Plagiarism is using someone else's words (or other creative output) and claiming them as your own or otherwise not giving them credit. It is to avoid plagiarism that we cite sources (among other reasons) and provide attribution for quotations and paraphrasing in our work.

Copyright infringement is about using creative work without *permission*. Copyright infringement happens whenever we use someone else's creative work without their permission. Does that mean that every time we quote someone in our papers, we need to ask for their permission? No! This is because the copyright law has a concept called "fair use" built into it. You can [read all about fair use elsewhere in this guide](#) but the kind of quoting that you would do in a paper would nearly always be a fair use.

So, it is possible to plagiarize without infringing copyright. It is also possible to infringe copyright without plagiarizing.

### Class Presentations

Most uses of images, video, or audio are allowed in face-to-face class presentations. This broad exception does not apply to copying and distributing text, so doing something like photocopying an article might not be allowed.

## Showing Movies

We are often asked by students or student clubs if it is okay to show a movie. There are, basically, two contexts in which you could show a movie without public performance rights (the license that allows you to show a movie legally in public when you are not the copyright owner). First, viewing in your private home is permitted if you are not opening it to the public or charging admission. Second, viewing in a classroom *as part of a class*. For virtually all other showings, you will need have public performance rights to show a movie.

## Note-Sharing Websites

Instructors provide materials such as lecture slides, assignments, and journal articles to help students learn in their courses. Often, these materials are posted to MLL. They are protected by copyright, so your use of them must comply with copyright law and SWOCC policies.

Generally, these materials are provided to students for their own educational or research use. Students should not share them with other people or on the Internet without their instructor's permission.

On the other hand, if you take your own lecture notes (not verbatim or word-for-word of what your instructor said), you own copyright to your notes and can share them with other students. However, you should not share your exam answers or completed assignments that can help other students to cheat. That is a violation of the Laker Code in the SWOCC Student Handbook, and those activities may result in disciplinary action against you.

## Film Screening Guidelines

The rules that govern screening movies vary depending on the context of the screening. These guidelines are provided to help you determine whether you need to purchase screening rights for a given showing of a film.

### Private Screenings

Private screenings do not require you to purchase a license. Private showings would include only a small number of family and/or friends and must take place in a location that is not open to the public.

### Classroom Screenings

Faculty teaching face-to-face classes are permitted to show films in their classrooms (or similar place devoted to instruction) to students in their class. The showing must be limited to people in the class, not open to the rest of campus, to qualify for this exception.

## Public Screenings

All other screenings are considered public, and a license must be in place to legally show the film. Failure to obtain a license can result in fines from \$750 to \$30,000 per showing! Any time a student group or college department shows a movie in any context (whether or not it is advertised to the public) and regardless of audience size, a license must be in place.

Most often, you will need to purchase “public performance rights”. Licensing for popular titles will likely cost between a few hundred and a thousand dollars and can be purchased from major movie distributors such as [Swank Motion Pictures](#), [Criterion Pictures](#), or [Motion Picture Licensing Corporation](#). Independent films may cost less and generally need to be negotiated with the copyright holder. In these cases, the cost could be as little as free and as much as a major motion picture.

Occasionally, films are purchased with public performance rights already granted. The library has some of these titles. This is an unusual case, but in that case, you would not need to purchase additional rights. If you are planning to show a film owned by the SWOCC Library, please ask the librarian to see if any licensing is already in place.

Finally, in the rarest cases, a film may be in the public domain (produced before 1925 or by the Federal government) or be licensed with a Creative Commons license that permits its use. In these cases, you would not need to seek additional licensing.

## What about Streaming Services?

In the case of streaming services, both copyright laws and the terms of service of the streaming companies will apply. Some Netflix Original documentaries [are available for one-time educational screenings if you comply with some conditions](#). Please consult the terms of service for the streaming platform in question. Most prohibit any public screening currently.

## Permissions

### Getting Permission

If you have determined that your use is not covered by any exceptions (Classroom Use, Fair Use, TEACH) and that the work is not in the public domain, you will need to ask the copyright holder for permission. [Columbia University has some very helpful model letters you can use as a template](#).

When asking for permission:

- Be as detailed as possible about how you plan to use the work. Include things like the number of students in your class, how long you plan to use it, exactly what portions of the work you want to use, etc.



- For journal articles and books from major publishers, rights are often handled by the [Copyright Clearance Center](#). You can go there and search before sending a letter. Permissions in the CCC will may be granted for a fee.
- Know that in many cases you will be quoted a fee for using the work. You can attempt to negotiate this fee.
- Be prepared for it to be a lengthy process. Just tracking down the owner can take a long time and response times can vary quite a bit.
- Remember that the creator is often not the copyright holder.
- If you are denied permission or quoted a fee that is unreasonable, remember that being denied does not have any impact on fair use. Some people ask for permission as a matter of course and only go to doing a fair use analysis if they are unable to get permission.

Seeking permission can be a long and frustrating process, but it is necessary in instances where your use is not permitted by any other part of the copyright law. Remember that not all educational uses are fair uses, and attribution is not a substitute for permission.

## Who Owns the Copyright?

A frustrating reality is that sometimes even when we want to ask for permission, even to pay for permission, it can be challenging to figure out who owns a copyright. Because copyright is automatic, requires no notice, and can be sold, given away, or otherwise licensed, it is often the case that the material that we are looking at has no notice of copyright or that the notice of copyright that it has is no longer accurate (as when a publisher is acquired by another publisher or when rights revert to the original author per a contract).

### **When the owner is a person**

Try to find contact information by searching for them online. Though your initial conversations might be over the phone or on Facebook or Twitter or email, remember that you will need a formal signed letter of permission to really feel confident legally speaking. Remember that people very often do not own the copyright on their work, but it is instead own by a publisher or other content producer.

### **When the owner is a company/organization**

Look on their website for a permissions or copyright department. Some companies will have big copyright permissions operations and make it easy for you. Others will have little information, and you will simply need to send a letter off to their main address.

### **When you do not hear back**

It is common to send a request off and never hear back or to hear back months later. If you do not hear back and your use is not covered by an exemption, the truth is that you probably cannot use that material.

# When There Is No One To Ask: Orphan Works

One of the most vexing problems in copyright law is the problem of "orphan works". These are works where it is difficult or impossible to determine who owns the copyright. The copyright term in the US is very long and copyrights outlive their creators by 70 years. Works by corporate or anonymous authors are covered by copyright for up to 120 years. That is a lot of time for the details of ownership to get lost in the shuffle.

When dealing with an "orphan work", you must decide to either take the risk that a copyright holder might later identify themselves or forgo using the work. It is hard to say how risky a given use might be. If a copyright holder came forward, they might simply insist that you stop using the work or they may attempt to recover damages. The Association of American Archivists offers these [best practices](#) for dealing with orphan works.

## Further Reading

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