

Copyright*

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Contacts

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Introduction

Copyright? Fair Use? Public Domain? The TEACH Act? These topics will be addressed in this resource. What do these terms mean and why do you need to be aware of them?

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Definitions

- **Copyright** – Protects authors (or creators) from use of their creative and intellectual work by others, giving them the exclusive right to perform, display, modify, copy and distribute their works.
- **Public Domain** – Works that no longer hold copyright restrictions, and as a copyright expires, can be public domain. Currently in the US, this is usually the life of the author plus 70 years.
- **Fair Use** – Conditions under which copyrighted work may be used by others without obtaining permission.
- **TEACH ACT** – An Acronym for Technology, Education, And Copyright Harmonization Act. Signed in to law in 2002, both increases and decreases rights related to copyright in asynchronous Internet classes.

Copyright is the right to control, including the reproduction, distribution of copies, performance and display of your original creative or intellectual works. A copyright is established when a work of original authorship is fixed (displayed). The copyright symbol (a C in a circle) is no longer required. The person owns a copyright as soon as it is presented in some form and retains ownership unless they transfer it to someone else. Exceptions to this rule are works for hire where an employer may own the copyright and Libraries that have the right to reproduce works from their collections under certain situations. From a teacher's viewpoint:

Each student owns the copyright to their own works created as assignments in your class. In general this means you may not copy, display or use their materials without permission (or establishing fair use). Materials you author for your students' uses are probably owned jointly with the college (see the definition of works for hire in the LCFA and LC Board current contract).

There are two exceptions to the copyright law which relate to teaching. The first exception involves the reading of a poem, or a section from a textbook, or other similar activity which are common learning activities in most classrooms. Since these are not considered public performances, the law allows for copyright exceptions (meaning you can use them without permission from the copyright owner) in these instances under the following conditions:

- The performance is part of a face to face classroom activity at a non-profit institution of education, "or similar place devoted to instruction".
- A copy of a film/video or other audio/visual work must have been legally made.

The second exception involves the TEACH Act which relates to performances in online classes, and includes numerous specific requirements that must be fulfilled. Further discussion on this exception follows in the section on the TEACH Act.

The College expects all instructors and students to follow copyright laws—compliance with the law is a priority. Copyright violations harm the integrity of the educational program, the good will of the College, and can result in disciplinary action and liability for any ensuing fees or damages.

Public Domain is easy to understand. Simply put, if works fall into public domain they are not copyrighted and you can use and copy them. There is no section on (or even reference to) public domain in the Copyright Act. The act limits the exclusive rights to use to a period of time. Therefore once expired the works can be used without permission. Public domain also covers works created by the federal government. By law, the government is not permitted to claim copyright protection (the work of the government belongs to all its citizens). Note that this is not necessarily true of State/Local governments where copyright may be in effect. For teachers, works that fall into public domain offer a wealth of materials that can be used in your classrooms (traditional or online) without the hassle of getting permission or worrying about fair use.

Fair Use is one of the most confusing areas of copyright. This section of copyright law allows for exceptions under which unauthorized use of copyrighted works may be legal. Fair use was incorporated into copyright law in 1976. Rather than being a definitive list of requirements, it is more a list of factors that are to be used as considerations. In order for use of copyrighted work to fall under the fair use clause, the use of the works will need to be deemed appropriate using the following four categories.

1. Purpose/Character of the use
2. Nature of the work
3. Amount of usage
4. Market impact

The law also provides examples of fair use that are relevant to teaching – “criticism, comment, new reporting, teaching (including multiple copies for classroom use), scholarship or research.” The law limits the scope of multiple copies that may be made for “fair use,” imposing requirements of brevity and spontaneity, if such copies are of limited cumulative effect for the course and carry designation of the copyright status of the work. The law defines the concepts specifically, and if you have questions concerning your ability to copy and distribute copyright material in class, please contact Brett Reinert. In all instances where fair use is not clear, it is the College’s policy that the instructor obtains permission to use the work.

“Fair use” depends on the balance among the four categories that determines fair use. The following chart (while far from inclusive) provides a method for determining for or against fair use.

Factors Generally Favoring Fair Use	Factors Generally Opposing Fair Use
Category: Purpose/Character of the use	Category: Purpose/Character of the use
Used for educational purposes	Used for commercial purposes.
Is a transformative or productive use (meaning you change the work to serve a new purpose).	Is verbatim or exact copy
Used for educational purposes in a noncommercial manner	Used merely for consumptive purposes, like entertainment
Used for nonprofit purposes.	Used for profit purposes.
Restricted use for a certain student or specific group.	Access to the public in general or other non-restive/undefined and unlimited users
Use of the works includes a citation on the author/copyright holder	Denies credit to author by not giving credit to him/her
Used in good faith (believing it to be fair use)	Used in bad faith (knowing it isn’t fair use)

Category: Nature of the work	Category: Nature of the work
Is a published work	Is an unpublished work
Is a work of factual, nonfiction, or news	Is fictional or a work of highly creative nature (like art, music, novels, films and plays) or is consumable (like workbooks).
Is important to educational objectives of the course	Does not relate to the educational objectives for the course.
Category: Amount of usage	Category: Amount of usage
A small amount is used. For example a chapter of a book or one journal article (sometimes considered to be 10% or less of the whole)	A large part or the whole works is used.
The selection used is not the central or most significant part of the whole work.	The selection used is central and the “heart” of the works.
Amount used is appropriate for the educational purpose.	Amount used is more than necessary for educational purpose.
Category: Market Impact	Category: Market Impact
User owns a lawfully acquired or purchased copy of the works	Works used were not lawfully acquired or purchased.
Use of the material has no significant effect on the market or potential market.	Use of the material does impact the market or potential market enough to effect sales. Could potentially lead to fewer copies being purchased.
One or few copies made/distributed	Numerous copies made/distributed
Use is restricted to specific users, like a particular class.	Works used are posted on the Web with general access or other non-defined access.
One time use	Repeated or long term use
Work is no longer in print or there is an absence of licensing available.	Licensing is reasonably available and /or affordable permission is available.

The final piece of legislation you need to be aware of is the Technology, Education, and Copyright Harmonization Act of 2002 typically referred to as the **TEACH Act**. Congress amended copyright law to facilitate Internet based distance education use of copyrighted materials without permission. The intent was to make the use of materials in online courses (which in LC’s case includes web-enhanced and web-blended course more in line with the rules governing traditional face to face classes. As such it both expands and narrows educators’ rights of usage in the virtual classroom.

As an educational institution covered by the TEACH Act, Lewis & Clark is required to comply with numerous criteria:

1. Technological measures have been taken to reasonably limit students’ retention and unauthorized dissemination of the works.
2. The work is stored on a system that is ordinarily not accessible to anyone other than anticipated recipients and the copy of the work is only maintained as accessible for a period that is reasonably necessary to facilitate the educational purpose for which it was made.
3. The materials are of the proper type and amount the law authorizes such as entire performances of nondramatic literary and musical works; Reasonable and limited parts of a dramatic literary, musical, or audiovisual works; Displays of other works, such as images, in amounts similar to typical displays in face-to-face teaching
4. The materials are not among those the law specifically excludes from its coverage: Such as materials specifically marketed for classroom use for digital distance education and copies you know or should know are illegal. As well as textbooks, course packs, electronic reserves and similar materials typically purchased individually by the students for review /use outside the classroom or class session.

5. Digitalization of an analog original may only be made when no digital copy of the work is available or where the digital copy available to the institution has technological protection that prevents its lawful use for the course. The amount of the work converted can be no greater than the amount that can lawfully be used.
6. Any permitted performance or display must be made by, or at the direction of, or under the actual supervision of an instructor as an integral part of a class session. It must be offered as a regular part of the course and directly related and of material assistance to the teaching content of the transmission.
7. The material has been obtained legally or can reasonably be assumed to have been.

These are the main requirements that must be met in order for use of copyright materials to be protected by the TEACH act, and fair use is still “in play”. If you teach online, the simplest approach is to link to (and cite) such works that are available through the web. Not making a copy of the material bypasses the above conditions and linking to resources is almost always legal.

The one last bit of information that is pertinent to this discussion: Public domain and copyright laws vary from country to country therefore US regulations may not apply to works copyrighted in other countries.

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Best Practices/Suggestions

One of the biggest problems in deciphering copyright law and sorting out what can be covered by fair use is that no clear definition for fair use exists—the concept is defined by the courts by application to particular circumstances, which can lead to the feeling that it is an arbitrary definition. Another difficulty is that the boundaries of fair use of copyright works in a digital forum (think online, web-blend, and web-enhanced classes) are still being defined. To guide you through these murky waters, here are a few suggestions to follow when making copyright material decisions regarding usage.

- For online use a link to a resource rather than uploading the material to your course.
- For online or face to face make sure you cite the source you are using so that the author/copyright holder has been given credit for the material.
- Include a copyright policy statement in your course outline/syllabus. Something similar to the following that helps students understand the basics of what they can copy from and into the course and what might be considered a copyright violation:
Sample Copyright Statement. Because instructional materials on this course website may be copyrighted, students may not download materials from the site to their desktops, laptops or hand-held devices, or alter or distribute any materials from the course site, unless clearly given permission or been directed to do so by the instructor. All material contained in this website may be downloaded for use during the duration of this course and printed out in hard copy to assist students in completing the learning objectives of the course, provided such downloading (digital storage) or hard copies do not violate copyright, TEACH act, or fair use laws. Students are also advised not to copy, paste or attach contents of articles or websites to this course. The copying of a picture/graphic from a source that does not specifically state that copying is acceptable, is a violation. Links to websites and articles, citing the source of any references used in postings or assignments is acceptable.
- Use care when copying something into your online course or making copies for your face to face classes when using something that is considered by law to be a performance, such as reading a short story or a selection from a textbook. The amount of the work that may be copied or performed is only what is

appropriate and necessary for your educational purpose. Typically copying a maximum of 1,000 words or performing 10% of the total material is usually safe. Using more is fine if the works fall under fair use.

- Use copyrighted material in a transformational way. Transformation means changing the form, structure, condition, nature, character, and/or purpose of the original works. Examples of transformational usage might include:
 - Showing a section of a movie that depicts historical events and having students compare and contrast the movie version with actual recorded facts about that event.
 - Playing a selection of music that students are then required to critically analyze based on presented criteria.
 - Providing a journal article on “Climate Change” and then having the class debate the validity of the argument presented.
- The following tend to relate to fair use of digital material:
 - Access to the material is restricted (located “behind a password protected Learning Management System like Blackboard).
 - Careful attention is paid to the type and amount used. In other words it falls within fair use guidelines and isn’t any type of material that is excluded by law from being copied (like providing students with a scanned text so they don’t have to purchase it from the publisher).
 - Available to students for a short time; one that is sufficient for pedagogical/learning goals/objectives.
 - Remember these rights and restrictions apply to both the use of a learning management system like Blackboard and social media (like Facebook or Twitter) incorporated into your course. Technical restrictions built into course management systems make it easier to comply while the use of outside social media makes it harder to implement the required restrictions.

In face to face classrooms, copyright law allows the performance or display of a copyrighted work for instructional purposes. In an online environment the law allows you to do much the same but only after certain restrictions have been met to virtually recreate conditions found in a face to face classroom.

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Conclusion

Copyright information often seems like mumbo jumbo and in a very real sense, it is! However, as practicing professional educators we need to be familiar with copyright, public domain, fair use and the TEACH act. We need to know enough to be able to reasonably decide what and how we can use copyrighted material in both our face to face and online classrooms. Material that doesn’t fall under public domain, fair use, or conditions of the TEACH act may require written permission from the copyright holder. Hopefully this resource can help you make sense out of your rights regarding the use of such material. If in doubt, check with Lewis & Clark’s Copyright Officer (contact information is provided at the start of this document).

FAQ – Frequently asked questions

How many semesters can I use the same journal article as a handout in my classes?

There is no exact ruling however the “rule of thumb” seems to be one academic year.

I found a podcast that I want my students to listen to. Can I make a copy of the file and either email it to my students or give them access to it by uploading it to my web-enhanced Blackboard shell?

There is no definitive answer. It may fall under fair use to do so, but the best solution would be to link to the podcast rather than email or post in Blackboard.

Can I show my own personal copy of a movie to my students?

Absolutely, as long as that copy was obtained legally and you are showing the movie for instructional purposes.

Can I stream a digital copy of a movie I legally own to my online class?

It depends. The more reasonable approach in light of the laws would be to incorporate portions of the film in a “reasonable and limited” manner. Legal restrictions may also apply to the process of digitizing and streaming the movie. You should consult with the Copyright Officer prior to doing so.

I use many VHS recordings that the college bought years ago. I'd like to have digital copies made of them so I can continue to use them in my classes. What do I have to do so the conversion is legal?

This issue is specifically covered by copyright. You can convert analog materials into digital format if one of the following is true.

1. The material is not already available in a digital format.
2. The material is available in a digital format but is subject to technical protection that prevents its use as defined by law.

Be aware that this authorization only covers what the law allows you to use, it is unlikely that you can convert the whole video unless showing it in its entirety would be covered by fair use.

I use clip art in PowerPoint presentations that I use in my face to face classes when I lecture. I then upload them into Blackboard for student use. Am I violating anything here?

That depends on what clip art you use. If it's from Microsoft's collection you are fine since we have a license to use Microsoft's software. If you copied the clip art from a legally obtained and licensed source that you own, you are OK. However if you just lifted the clip art from a source on the web that doesn't explicitly state that it can be used without permission, then you may be in violation.

There is a web resource that I want my students to read and I've been able to link to it in the past. However the article is no longer available. I have a pdf copy of the article I made for my own use. Can I upload the .pdf copy to my course in Blackboard? Can I just print the copy for my face to face students?

You can copy it for Face to Face classes under fair use. It also appears that this would be admissible for your online classes as well. However, before doing so, you might want to do a search and see if the article is available from another source that you could link to. There may be a requirement to go through copyright.com to pay licensing fees depending on the source.

How do I know what resources are public domain so that I can just copy them into my online course?

In general, in the US anything that was published prior to 1923 is in public domain. If published between 1923 and 1963 it may be in public domain. Federal government publications don't hold copyright so they are in public domain as soon as published.

A good source is Creative Commons available at <http://creativecommons.org>

Also remember that just because you can legally copy and paste a work in public domain doesn't mean you should. Linking to the source also saves room on the server so it's almost always best to link rather than copy.

I sometimes see web pages that include a statement like "Permission to copy and distribute any material originating at this site is granted for educational use". Is it OK to just copy this stuff and use it in my classes?

Probably so, as such a statement is considered permission to copy. Also remember that just because you can legally copy and paste a work doesn't mean you should. Linking to the source saves room on the server so it's almost always best to link rather than copy.

Are YouTube videos protected by copyright?

Yes, anything uploaded to the net is considered copyrighted (with the exception of federal government agency material and those materials already in public domain). Copying the video to your course would be a violation but you can link to it and show it in your face to face courses directly from the site. Since a great deal of YouTube videos incorporate copyrighted material, the material that isn't original has to fall under fair use. That's why you will frequently find that videos that were available have been removed from the site for copyright violation.

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Resources

Creative Commons

<http://creativecommons.org>

Creative Commons is a nonprofit organization that enables sharing and through free legal tools.

Taking the Mystery out of Copyright

<http://www.loc.gov/teachers/copyrightmystery/>

This Library of Congress site provides simplified information on copyright and fair use

PBS Teachers Copyright and Fair Use

<http://www.pbs.org/teachers/copyright/>

This site includes several valuable resources including information on the recording and dissemination of PBS programming.

Find Law Copyright and Education

http://smallbusiness.findlaw.com/intellectual-property/copyright-and-education.html?DCMP=GOO-BUS_Copyright-Classroom&HBX_PK=copyright+laws+teachers

This source provides you with a simple yet comprehensive explanation about educational copyright.

Copyright Crash Course

http://smallbusiness.findlaw.com/intellectual-property/copyright-and-education.html?DCMP=GOO-BUS_Copyright-Classroom&HBX_PK=copyright+laws+teachers

This site provided by the University of Texas includes a TEACH Act checklist.

TEACH Act Frequently Asked Questions

<http://copyright.psu.edu/psu-policy/teach-act/>

This site provided by Penn State may answer some of your questions concerning TEACH.

An Education in Copyright Law: A Primer for Cyberspace

https://cpb-us-e1.wpmucdn.com/blogs.ntu.edu.sg/dist/8/644/files/2014/06/Vol13_I1_diotalevi.pdf

This article was published by R. N. Diotalevi in LIBRES: Library and Information Science Electronic Journal in March of 2003. It provides a scholarly overview of issues related to copyright, particularly those related to online use.

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