

Everything* Faculty Need to Know about Copyright and Fair Use

*ok, just enough for the classroom

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The plan

- ★ What is copyright?
- ★ Review 3 copyright exceptions that help in the classroom
- ★ Where do I begin? 5 simple steps
- ★ Walk through some scenarios

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Why should you care?



We care and have your back



actyourshoesizegirl

Reblogging this every time I see it. Copyright is important for creators but it should not support cultural elitism. Affordability and accessibility of cultural content is key unless we want to live in a very divided society.



Created by Simon Stratford
from Noun Project

Friends (especially library folks) in or near Judy Chu's district (27, <https://chu.house.gov/about/our-district>), Chu is 1 of 2 cosponsors of this bill to move the US Copyright Office out of the LOC and to make its head a presidential appointee. Please call (909-625-5394 or 626-304-0110) and tell her this is a very bad idea, especially re: who our current president is (boo) and who our current librarian of congress is (yay). I usually agree with her, so maybe she just needs more information! 😊



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United States Legislative Information

H.R.890 - 115th Congress (2017-2018): Copyright Office for the Digital Economy Act

Summary of H.R.890 - 115th Congress (2017-2018): Copyright Office for the Digital Economy Act

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Raphael's School of Athens: A Theorem in a Painting?

Robert Haas

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Abstract / Synopsis

Raphael's famous painting *The School of Athens* includes a geometer, presumably Euclid himself, demonstrating a construction to his fascinated students. But what theorem are they all studying? This article first introduces the painting, and describes Raphael's lifelong friendship with the eminent mathematician Paulus of Middelburg. It then presents several conjectured explanations, notably a theorem about a hexagram (Fichtner), or alternatively that the construction may be architecture. The author finally offers his own "null hypothesis": that the scene is not actual mathematics, but simply the fascination, excitement, and joy of their work.

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What is Copyright?

Based on the US Constitution Article 1, Section 8: Congress shall have the power... ***To promote the progress of science and useful arts***, by securing for ***limited times*** to authors and inventors the exclusive right to their respective writings and discoveries.

“Copyright is a form of protection provided by the laws of the United States (title 17, U. S. Code) to the authors of “**original works of authorship**,” including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both **published and unpublished works**.” ~ U.S. Copyright Office

17 U.S. Code § 102

(a) Copyright protection subsists, in accordance with this title, in ***original*** works of authorship fixed in any ***tangible medium of expression***, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

What things can be protected by copyright? § 102(a)

- (1) literary works;
- (2) musical works, including any accompanying words;
- (3) dramatic works, including any accompanying music;
- (4) pantomimes and choreographic works;
- (5) pictorial, graphic, and sculptural works;
- (6) motion pictures and other audiovisual works;
- (7) sound recordings; and
- (8) architectural works.

What is not protected by copyright?

(b) In no case does copyright protection for an original work of authorship extend to any **idea, procedure, process, system, method of operation, concept, principle, or discovery**, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

Copyright Basics § 102(a)

- Considered Personal Property (can be sold, transferred, inherited)
- Original Works of Authorship
- Doesn't Cover Facts or Ideas
- Automatic Protection when Work Created
- Must Be in Fixed Form “Tangible Medium of Expression”
- Registration (Not required after March 1, 1989)

Authorship ≠ Ownership

Where Do I Begin? 5 Simple Steps

1. **Is work protected** by copyright?
2. Is there a **specific exception** in copyright law that covers my use?
3. Is there **a license** that covers my use?
4. Does my use qualify as “**Fair Use**?”
5. Do I need to **seek permission** from the copyright holder or can I **find an open access option**?

Copyright Resources: May I (fill in the blank)?
This guide is designed to help build an understanding of copyright as users and makers of copyrighted content

Home What is Covered by Copyright **May I (fill in the blank)?** Fair Use - 4 Factors Public Domain Creative Commons

Authors - Keep Your Copyright! Attribution Additional Resources

Resources

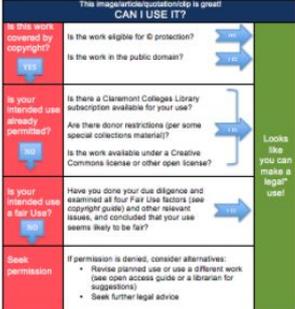
- [Chart to Determine Copyright Duration or Public Domain Status more...](#)
- [Copyright Slider](#)
Is it Protected by Copyright?
- [Section 108 Spinner](#)
Tool to help determine if the library or archive can make a reproduction for users, for replacement, or for preservation.

Framework For Analyzing Any Copyright Problem

- [WI 5 Questions Form](#)
Don't know where to begin? Use this form!

Copyright Decision Map

-  1. Use this simple graphic to determine if you can use the work.



The flowchart is titled "CAN I USE IT?" and consists of several decision points with arrows leading to a final outcome. The decision points are: "Is the work eligible for G protection?", "Is the work in the public domain?", "Is there a Claremont Colleges Library subscription available for your use?", "Are there donor restrictions (or some special collections material)?", "Is the work available under a Creative Commons license or other open licenses?", "Have you done your due diligence and examined all four Fair Use factors (see copyright guide) and other relevant issues, and concluded that your use seems likely to be fair?", and "Seek permission". The final outcome is "Looks like you can make a 'legal' use!".

Exemption #1: Classroom Exception § 110(1)

- Allows **performance or display** of protected material in a **face-to-face** teaching setting.
- Must be **in a classroom** and at a **non-profit educational** institution.
- Performance and display in the classroom must employ a **legally obtained** copy (including borrowed copies) – no “bootleg” copies allowed.
- Does NOT allow copying. This is an exception to the exclusive rights of performance and display, but not the right of reproduction.
- If this exemption doesn't seem to apply, **try Fair Use**.



Exemption #2: “Transmission” to Students § 110(2) TEACH Act

- Allows digital copies in course management systems under a specific set of conditions.
 - Text and images may be transmitted (displayed) in **amounts comparable to in-class** teaching.
 - Music and video may be **used in portions**
 - Access must be **restricted to students registered** in the course, and notice that the material is protected must be given.
 - Technological measures to **prevent the material from being retained** after the course is over **or copied** to others are required. Streaming of music and video is a good way to meet this requirement.
 - The institution should have **policies and educational programs** about copyright in place to take advantage of this exception.



Copyright Resources: Creative Commons

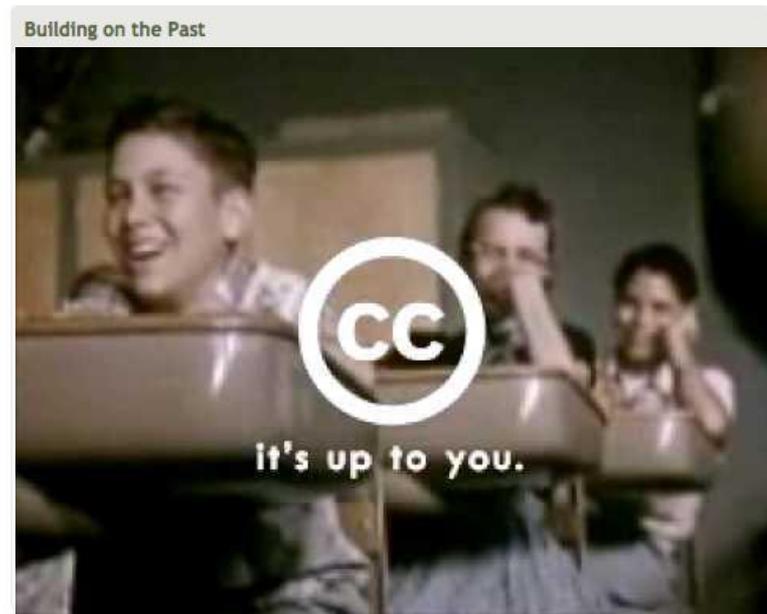
This guide is designed to help build an understanding of copyright as users and makers of copyrighted content

Home	What is Covered by Copyright	May I (fill in the blank)?	Fair Use - 4 Factors	Public Domain	Creative Commons
Getting permission from copyright holder	Authors - Keep Your Copyright!	Attribution	Additional Resources		

It is About Time: Getting Our Values Around Copyright

The existing system of copyright cannot work in the digital age. Either we will force our kids to stop creating, or they will force on us a revolution.

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Your Creative Commons License

- [Creative Commons in the Classroom](#)

About the licenses

- [Best Practices for CC Attribution](#)
Attribution examples and best practices for other creators' CC licensed materials
- [CC Licenses explained](#)



Exemption #3: Fair Use § 107

Fair Use is Determined by a Four-Factor, Fact-Specific Test

1. Purpose & Character of Use
2. Nature of Work
3. Amount and Substantiality
4. Effect on Potential Market



A Fair(y) Use Tale (NOT a Disney movie) by Bucknell College professor, Eric Faden <https://youtu.be/4bK8AZSYtPU>



*Any Flickr member is able to add tags or comment on these collections. If you're a dork about it, shame on you. This is for the good of humanity, dude!

Open Access

- Open Educational Resources
- Open Access Content
- Creative Commons
- Public Domain

<http://libguides.libraries.claremont.edu/OpenAccess>

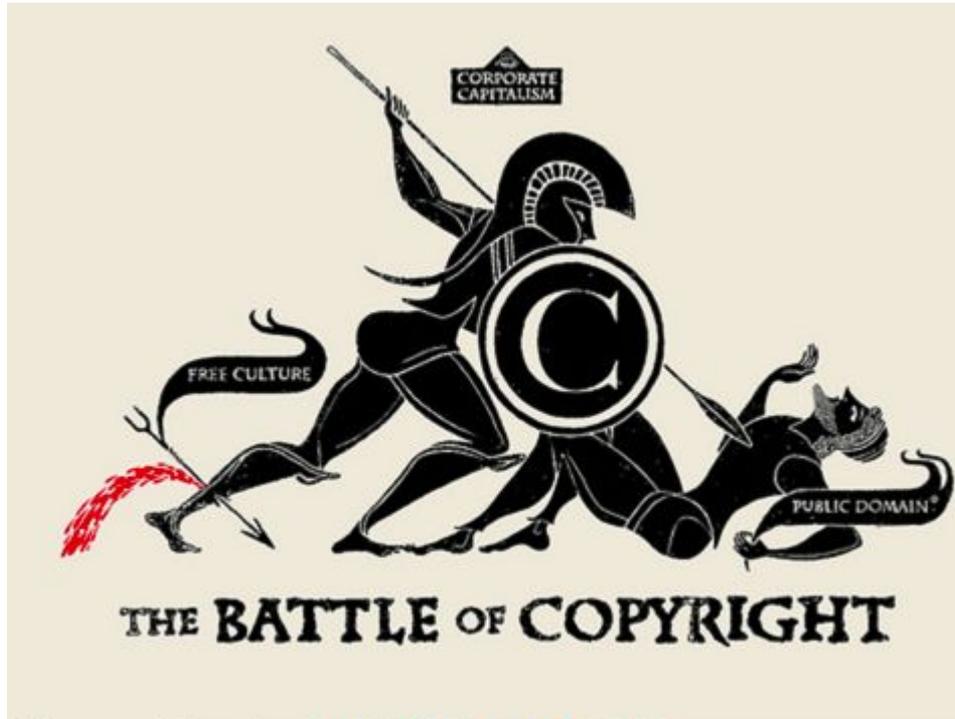
<http://libguides.libraries.claremont.edu/OER-AFCM>

<https://www.flickr.com/commons> No known copyright restrictions

A random sprinkling of our participating institutions...



Copyright Scenarios



Authorship and copyright ownership scenario #1

Arthur is a super-star faculty member at the Claremont Colleges. In the last few years, he has written some of the most highly cited works in his sub-discipline. Students come to the university especially to study with him. Arthur's department wants to put some of his articles up on their open website, in order to showcase his important work. However, Guinevere, the department's administrative assistant, has started wondering if there is a problem with making a copy of the PDFs of the articles and putting them online. She asked Arthur if he had a copy of the contracts with the publishers that he signed when the papers were published. Arthur can't find them. What should Arthur and Guinevere do?

Authorship and copyright ownership scenario #1

- A. Go ahead and put the articles up on the website because Arthur and the university are both quite famous. The publishers will be pleased to get the publicity and proud to be associated with a famous researcher and a famous institution.
- B. Forget about it because Guinevere will get in deep, deep trouble for copyright infringement if she posts the articles.
- C. Contact the publisher or check the publisher's web site for Arthur's options.

Some things to remember

- The copyright holder is not always the creator or author
- Licenses / retain copyright

What we can do to help:

- Negotiate with the publisher before and after copyright transfer
- Tools: Author rights agreement, Scholarship@Claremont

Authorship and copyright ownership scenario #2

Lancelot, another faculty member in Arthur's department, is also a highly regarded researcher. He usually signs his copyright over to the publisher when he publishes articles. He likes for his students to read a couple of the articles he has written, and so the bookstore has made arrangements with the publisher to include the articles in a paper coursepack they produce for one of Lancelot's classes.

Students pay fees for the coursepacks, and some of that money goes back to the publisher as royalties. When Guinevere asked Lancelot if he had the right to allow the department to post his articles on its open website, Lancelot said yes. His reasoning is that since the publisher has allowed him to use the articles in coursepacks, then he has permission to use the articles in other ways as well. Is Lancelot correct?

Authorship and copyright ownership scenario #2

- A. Yes, because Lancelot wrote the articles.
- B. Yes, as long as it's for Lancelot's department's website.
- C. Not necessarily. Lancelot should look at the scope of the license given for the coursepacks.
- D. No, because a coursepack that is paid for and the open web are very different environments.

Some things to remember

- Licensing over copyright
- Sometimes this is a rights that can be negotiated with the publisher
- How much students pay for course materials
- Textbooks publishers are increasingly selling access codes

What we can do to help:

- Open Educational Resources (OER)
- Negotiate licences

Educational settings and faculty requests #1

I had a quick question regarding copyright for copying for personal/educational use. I am preparing for a class next semester and don't want to schlepp the books (there are 6) to China. I want to scan and make copies to put on my Kindle to take with me.

What would you ask this professor in order to give her an answer or suggestions?

Educational settings and faculty requests #2

Hello, I am an administrative assistant at XXXX College, and a faculty member is asking about copyright clearance for his class. He has 50 articles he needs clearance for. How does he go about getting this?

Educational settings and faculty requests #3

Hi, I am a professor at XXXX College. I was wondering if I can coordinate with you to put together a course packet for my class in lieu of a textbook. There isn't the perfect textbook, so I have very specific chapters that I want for my students to have some certain textbook. I need help in getting the rights to copy and distribute to my class. Could you help me with this?

Things to remember

- Most publishers grant “clearances” for coursepacks—that is, for a fee, publishers give permission for their books or articles to be copied and distributed in educational contexts. Such clearances normally last for one semester or school term. Then the professor has to seek clearance again.
- In 1991, a federal court ruled that a publisher’s copyright was infringed when a Kinko’s copy shop reprinted portions of a book in an academic coursepack. (Basic Books Inc. v. Kinko’s Graphics Corp., 758 F. Supp. 1522 (S.D. N.Y. 1991).) **The court said that reprinting copyrighted materials in academic coursepacks was not a fair use and that permission was required.**

How we can help: OER, permission templates

Student use & creation of copyrighted material

P.1 I'm submitting my thesis on December 9th and was wondering if I needed permission to utilize screencaps in my paper? I was planning on using still images from the BBC America show Orphan Black, and I wasn't sure if that was something I needed to ask permission for and, if so, who and how I would ask for permission.

P.2 I'm not 100% sure that my images fall under Fair Use, so it seems like the most logical option is to get permission. If I'm using images from Orphan Black, would I contact one of the showrunners for that? If so, my only way of contact is through Twitter -- if I get permission through Twitter to use images for my thesis would that be viable? Or is there a more formal form of permission I'd need? And is that permission something I would need to attach to my thesis somehow before uploading it?

Things to remember when working with students

- If student is a minor, parent may have a say. Minors don't have the ability to negotiate on their own.
- Encourage Fair Use
- Pedagogical basis, legally and ethically, helps students to take their own work seriously, helps to model the behavior

Teachers can model behavior

- Ask permission of the student
- Keep a record of the permissions granted
- Always attribute the work to the person who created it
- Federal laws come into play, learn institutional policies regarding student works

Summary

Takeaway Messages:

- Copyright is for you, the creator. Be aware of your rights and retain them.
- Know the basics of copyright. Use legally and model for your students.
- Students are not only users of copyright but creators of copyrighted works.

Useful Resources:

- <http://libguides.libraries.claremont.edu/copyright-resources/copyright>
- <http://libguides.libraries.claremont.edu/ScholarlyCommunication>