

Copyright Talking Points

University Copyright Office
Donna L. Ferullo, J.D.
Director, Associate Professor of Library Science



This sheet is intended to be a basic reference guide covering common copyright issues since fellow faculty and students often approach you with copyright questions. Please do not hesitate to refer people with questions to the University Copyright Office (UCO) at 496-3864 or direct them to the UCO website at <http://www.lib.purdue.edu/uco>.

Exceptions to copyright law—Education and Fair Use: Exceptions to copyright law allow a person to use a work without seeking permission from the copyright holder. *Education exception* and *fair use* are the two major exceptions utilized in higher education. If neither of the exceptions applies, then the user must request permission from the copyright holder.

Education exception is split into two categories—*face-to-face instruction* and *virtual instruction*.

- **Face-to-Face Instruction:** printed documents, video, music, images can be displayed or performed in the classroom at a non-profit educational institution provided that:
 - All materials are legally acquired
 - Materials are for educational/instructional purposes and not entertainment purposes
 - Materials have a direct relationship to course purpose/content
- **Virtual Instruction:** additional exceptions for virtual instruction are outlined in the TEACH Act. Digital transmission of required materials should not exceed what would be available or used in the traditional classroom. In addition to the above requirements for face-to-face instruction, **all** of the following requirements must be met:
 - Materials are only available to officially enrolled students
 - Materials are only made available while the course is offered
 - Students must be provided with a notice stating that materials may be protected by copyright law and should not be disseminated beyond the digital classroom
 - Materials that students would be expected to purchase in a traditional classroom setting should not be transmitted through electronic means

Fair Use Exception: The purpose of fair use is to allow the public to use copyrighted works under certain circumstances without paying royalties or obtaining permissions from the copyright owner. Fair Use is technologically neutral so it can be applied to any medium. Use this four-factor analysis to determine if use of the work is permitted without seeking the owner's explicit permission:

First Factor What is the purpose and character of the use?		Second Factor What is the nature of the work to be used?		Third Factor How much of the work will be used?		Fourth Factor What is the effect of the use on the market for the work?	
Favors Fair Use	Favors Permission	Favors Fair Use	Favors Permission	Favors Fair Use	Favors Permission	Favors Fair Use	Favors Permission
Nonprofit Educational Personal Teaching Criticism/Comment Scholarship/Research News Reporting	Commercial For profit Entertainment	Fact Published	Creative Unpublished	Small amount	Large amount Heart of work	No effect Licensing/permissions not available	Major effect Work made available to the world

- If the balance weighs in favor of fair use, then the work can be used without permission. However, if the balance weighs against fair use and other exceptions do not apply, then permission must be obtained. The following issues are important to remember when thinking about copyright law exceptions:
 - Not all educational use is automatically fair use. The analysis should be applied to each work.
 - A good faith determination must be made. This means that an individual must understand the exception chosen, must be able to articulate it, and must be able to reasonable apply it to the current use situation.

Author Rights—refers to the bundle of rights an ‘author’ is entitled to once an original work is fixed in a tangible medium of expression. This means faculty are not the only people considered ‘authors’ nor are formal scholarly works the only works protected under the law. Students are authors too and their works are protected as well. At Purdue, faculty and students generally retain the copyright to the works they create here. For more information on ownership of works created at Purdue please see Intellectual Property Policy VIII.4.1 at http://www.purdue.edu/policies/pages/teach_res_outreach/documents/VIII_000.pdf

- Authors have the right to:
 - Publish and distribute their work in print or other media
 - Reproduce their work
 - Prepare translations or other derivative works
 - Perform or display their work publicly
 - Authorize others to exercise any of above rights
- Authors own the rights to their works except when:
 - Work is production of ‘work for hire’
 - Rights are signed away by the author to another party (i.e. a publisher)
- Authors who submit scholarly work for publication are encouraged to:
 - Negotiate with the publisher in order to retain all or some of these rights instead of signing away all of the rights to the publisher
 - Understand that publication agreements are legal documents that should be entered into with care, read completely, and retained for future reference. Consider consulting a personal attorney for legal advice
 - Consider using the CIC Author’s Rights Addendum endorsed by the Purdue University Senate. Visit <http://scholarly.lib.purdue.edu> for more information on this addendum
 - Rather than transferring copyright, authors can retain their copyright and grant the publisher an exclusive license to use the work or a non-exclusive license to reformat, publish, and distribute the work for a limited time (see www.creativecommons.org for more information about this option)
 - Consider alternative publication options such as open access journals. For more information see <http://www.arl.org/sparc/author/options.html>

Intellectual Property Campus Resources—There are several offices on campus that deal with intellectual property questions and issues. This table will help you figure out who you should contact for information:

University Copyright Office	Purdue Marketing Communications	Office of the Vice President of Research	Office of Technology Commercialization
Advises on the <u>use</u> of other’s or one’s own copyrighted works Donna L. Ferullo Phone: 765-496-3864 www.lib.purdue.edu/uc	Advises on Purdue trademarks and licensing of trademarks Phone: 765-494-4600 www.pmc.purdue.edu	Advises on ownership issues for works created at Purdue; specifically patents, copyrights, and conflicts of interest & advises NIH funded researchers Peter Dunn Phone: 765-494-6840 www.purdue.edu/research/vpr/index.shtml	Controls and maintains patents and copyrights owned by Purdue Phone: 765-494-2610 www.prf.org/otc