A Guide to Copyright

Issues in Higher Education

PURDUE UNIVERSITY
The Purdue University Copyright Office was established to provide guidance to faculty, staff, and students on the use of copyrighted material and to promote copyright awareness and compliance throughout the Purdue community.

This publication is intended to provide an overview of portions of the copyright law that are especially relevant to education and research activities.

Copyright law is complex and it is beyond the scope of this brochure to address every aspect of the law. Many times there are no simple answers but a cursory understanding of the basics will help you determine when to consider copyright issues as you learn, teach, and research here at Purdue.

For further information on copyright compliance please visit the University Copyright Office website at www.lib.purdue.edu/uco or contact the office by telephone at (765) 496-3864.

Copyright Basics

1. What is copyright?
Copyright is a federal law. It allows authors to control the use of their works for a limited period of time. Once that time period has expired, the public is allowed to freely use the works without paying royalties and/or obtaining permission from the copyright holder.

2. What are the requirements for a work to be copyrighted?
The work must be an original work that is fixed in a tangible medium of expression. The word "copyright" or © is no longer required for works to be considered copyrighted. A work is protected from the moment of fixation.

3. What are the copyright holder’s exclusive rights?
- To publish or distribute the work
- To reproduce the work
- To create derivative works
- To perform or display the work publicly
- To authorize others to exercise the above rights

4. How long does copyright protection last?
Works created on or after January 1, 1978 are protected for a term of the life of the author plus 70 years. If the work is a product of a corporate author, then the protection is for the shorter of 95 years from publication or 120 years from creation.

5. What can be copyrighted?
Eight categories of works are copyrightable:
- Literary, musical and dramatic works
- Pantomimes and choreographic works
- Pictorial, graphic and sculptural works
- Sound recordings
- Motion pictures and other AV works
- Computer programs
- Compilations and derivative works
- Architectural works

6. What cannot be copyrighted?
- Ideas, procedures, methods, systems, and processes
- Titles, names, shorts phrases, and slogans
- Facts, news, and research
- Works produced by US government employees or agencies

7. What is the public domain?
The public domain consists of all works that never had copyright protection and works on which copyright has expired. Works published in the U.S. prior to 1923 are in the public domain. All works in the public domain are free for the public to use.
Use of Copyrighted Works

Exceptions for institutions of higher education are built into the law allowing for use of copyrighted works without the author’s expressed permission under specific circumstances. There are two major exceptions that are generally used in higher education: the Education Exception which is split into two categories—face-to-face instruction and virtual instruction—and Fair Use.

Face-to-Face Instruction

Instructors in nonprofit educational institutions are allowed to use copyrighted works in the classroom or a similar place devoted to instruction under specific circumstances provided that the material is directly related to course content. Here are some examples of answers to the most commonly asked questions:

- Instructors involved in face-to-face teaching activities can lawfully show a video or movie in class provided that it is relevant to the course and is not being shown for entertainment purposes.
- Images, video clips, and music embedded in power point presentations used in face-to-face teaching activities is considered an acceptable use of copyrighted works. Images, however, generally should not be included in power point slide handouts.
- Instructors may distribute copies of single journal articles or book chapters in class as long as the distribution does not substitute for the purchase of a textbook or course pack.
- Duplicate copies of articles are considered fair use unless you compile several works into a packet for distribution. The compilation is considered a new work and permission to use the various works is needed.

Virtual Instruction

Virtual Instruction refers to classes in which instruction takes place exclusively online as well as classes with an offline classroom component and a complementary online instructional site such as Blackboard. In either case, instructors are allowed to digitally transmit materials as long as all of the following requirements are met:

- Uses of works should be related to course content and should be limited to an amount comparable to what is typically displayed in a face-to-face classroom setting.
- Transmission must be made solely for and limited to students officially enrolled in the class.
- A notice must be provided explaining to students that the works may be protected by copyright and should not be distributed beyond the class participants.
- The material must be legally acquired.
- Textbooks, course packs, or other materials that are typically purchased by students for the course should not be transmitted.
- Access to the materials must be terminated at the end of the official class term.
- Analog works cannot be converted into digital works unless no digital version is available. Any conversion is restricted to the amount that would be used in a traditional classroom. No further copies can be made from copies.
- Instructors should provide links to outside materials within course websites rather than scanning and posting a .pdf file of, for example, a journal article.

Fair Use

The purpose of the fair use exception is to allow the public to use copyrighted works under certain circumstances without having to pay royalties or obtain permission. Fair use is determined by applying a four factor analysis that balances the rights of the copyright holder with that of the public. The four questions are designed to help a user decide if the planned use of the work is fair under the law.
First Factor
What is the purpose and character of the use?

**Favors Fair Use**
- Non profit
- Educational
- Personal
- Teaching
- Criticism/comment
- Scholarship/Research
- News reporting

**Favors Permission**
- Commercial
- For profit
- Entertainment

Second Factor
What is the nature of the work to be used?

**Favors Fair Use**
- Fact
- Published

**Favors Permission**
- Creative
- Unpublished

Third Factor
How much of the work will be used?

**Favors Fair Use**
- Small Amount

**Favors Permission**
- Large amount
- Heart of the work

Fourth Factor
What is the market effect of the use of the work?

**Favors Fair Use**
- Small Amount
- No effect
- Licensing/permission unavailable

**Favors Permission**
- Large amount
- Major effect
- Work is made available to the world

If the balance of the four factors weighs in favor of fair use then the work can be used without obtaining permission from the copyright owner. However, if the balance weighs against fair use and other exceptions do not apply, then permission to use the work must be obtained.

The fair use analysis must be applied to each use of every work. Fair use is technologically neutral so the analysis may be used for any medium.

Please be aware that not all educational use is automatically fair use. It is the responsibility of each member of the Purdue University community to apply all the factors and to make a reasonable and good faith determination as to whether or not the use can be considered fair.

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Your Copyright Ownership

There are two sides to copyright—use and ownership. While much of the information presented here concerns the lawful use of others’ copyrighted works, remember that almost everyone is an author in some way—including you.

As such, you generally own the copyright to your works such as self-created websites, social networking site profiles, photographs, emails, home videos, as well the works produced in your roles as students and researchers. It is important to understand your rights as an author, as well as the ways in which you can better protect your intellectual property.

Management Strategies

For scholars, shifts in information dissemination have led to significant changes in the publishing industry. These changes highlight the need to consider how you have managed your copyrights in the past and how you plan on managing them in the future. For example:

- Negotiate with publishers if the terms of the copyright transfer agreement do not meet your goals as a scholar
- In the past you may have transferred all your copyright to the publisher. New options for retaining some of your author rights exist such as the use of the CIC author addendum
- There is a provision in the copyright law that may, under certain circumstances, allow you to reclaim your copyright you signed away in the past. Please contact the University Copyright Office for more information about this provision.

It is advantageous to familiarize yourself with changes in the publishing industry in your field and to more closely examine copyright transfer agreements before signing. Please visit the University Copyright Office website for more information on copyright management strategies and other issues related to author rights.

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This publication is intended to provide basic copyright information while focusing on issues related to higher education. It is not intended as legal advice. Please consult your own attorney for such advice.

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It is important to understand that copyright issues exist in cyberspace above and beyond the use of the medium as an instructional tool. Because the Internet provides free access to information and ample opportunities for everyone to be an author, it is fertile ground for copyright infringement. The following will help you determine lawful use of information found and posted on the Internet:

- Information on the Internet is copyrighted. Free access to materials does not put them in the public domain.
- Fair use exists in cyberspace.
- E-mail messages are copyrightable works.
- Original information published on social networking sites or personal websites are copyrightable. In addition, the use of others’ works posted on these sites can be considered copyright infringement unless its use is authorized by the copyright law or the owner of the work.
- Downloading and/or file sharing of video, music, and other works may be considered copyright infringement unless authorized by the copyright law or the owner of the work.
- Only legal copies of digital works should be used.
- Authors of published works should consult the terms of copyright transfer agreements to determine if it is lawful to post the published work on a personal website before doing so.

The Director of the University Copyright Office is available for presentations at your faculty, staff, and/or student orientations or meetings. Please use the contact information below to set up a consultation.

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