

Copyright issues for people online

Maxwell Memorial Library's Technology Class
Thursday, November 21, 2019

0. Introduction

There are many myths about what copyright allows or forbids, and the ease of copying and sharing material that technology provides has made it necessary for everyone to sweep those myths away and get a better understanding of copyright's reality.

In November's tech program, we will look at the general outlines of copyright law, some resources for getting more detailed information, and Open Culture licensing (like Creative Commons and various so-called Copyleft licenses) that creators use to clarify terms for reusing their creations.

0.1. *The Disclaimer*

I am not a lawyer, the material in this handout does not contain or constitute legal advice, and it is not guaranteed to be accurate. It is merely intended to convey general information about copyright law. The sources I point to are also general in nature and should not be seen as presenting legal advice. To get answers to questions that go into more depth about copyright law or that involve particular cases, you should consult a licensed attorney.

Note that trademark law will also apply to some instances of reusing creative material. I do not talk much about trademark law here, but section 6 on permissions at the end of the document shows some examples of indicating how one's reuse complies with trademark law.

1. Some copyright basics

Copyright law falls under the powers that the Constitution explicitly gives to Congress.¹ The details of copyright law have changed a few times since the first copyright act back in 1790 — which only protected “books, maps, and charts”² — but the motive of copyright law is still “to promote . . . useful arts” by granting a limited term, transferable monopoly to creators over various activities involving their works. Those activities are:³

- Reproduction, publication, and initial distribution,
- Performance and display, and
- Creation of “derivative works,” that is, works that make further use of the world, characters, and so on created in the work.

1 Art. I, §8, clause 8: “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;”

2 US. Copyright Office, “History and Education,” Copyright.gov, accessed November 17, 2019, <https://www.copyright.gov/history/>.

3 “Circular 1: Copyright Basics” (U.S. Copyright Office, October 2019), 2, <https://www.copyright.gov/circs/circ01.pdf>.

2. Good news: Things that are (probably) OK that you might have thought weren't! 😊

2.1. You (might) be able to share that cookie recipe you paid \$350 for

A recipe's list of ingredients is not protected by copyright. The directions might be (if they have "substantial literary expression"), but if they are a simple list of procedures, then they also lack protection.⁴ Similarly, formulas, methods, and procedures in general receive no copyright protection.⁵

But before you head for the copy machine with that cook book, note that a collection of works (even of mere recipes or of more extensive public domain material) might be protected since the process of collecting and arranging the items in the collection counts as creative work.

2.2. In the article you're writing, you can quote (minimally) from other works that it relies on

Copyright law recognizes that the public needs to be able to reuse parts of otherwise protected material in order to communicate ideas about that material. The Fair Use provision of the law⁶ allows some kinds of reuse "for purposes such as criticism, comment, news reporting, teaching ..., scholarship, or research." Whether reuse is fair, though, is considered in light of four factors:

1. How the material is being used (educational use and noncommercial use are pluses here),
2. The source work's nature,
3. How much of the source is being reused, and
4. What effect the reuse has on the market value for the original.

I should note here that Fair Use is a murky area of law since the judgments on the four factors can be subtle. The US. Copyright Office has an [index of federal court cases](#) that have involved Fair Use,⁷ but if the use you have in mind is outside areas like the usual common sense notion of quoting only as much of the source as you need for your term paper, say, then you should probably consult an attorney.

4 "Circular 33: Works Not Protected by Copyright" (U.S. Copyright Office, September 2017), 2, <https://www.copyright.gov/circs/circ33.pdf>.

5 They might, however, be patentable. Also, a given description might have enough original, creative content to fall under copyright.

6 17 U.S.C. § 107

7 <https://www.copyright.gov/fair-use/fair-index.html>

2.3. You can (usually) lend, rent, sell, give away, or even destroy (!!!) a tangible, creative item that you own

This part doesn't have much applicability to things online, but the Doctrine of First Sale is one of the most important parts of copyright law for libraries. It allows the owner of a tangible, creative item (for instance, a book printed on paper, a CD, a DVD, a painting, and so on) the legal ability to do those things listed in the heading for this subsection.⁸

As with laws in general, there are exceptions. Computer software & music can't be *rented* out without the copyright holder's permission. Also, the owner of a piece of visual art that was produced in a sufficiently small run can't destroy it without permission.⁹

2.4. "Hey, I own that phrase!" ... Nope (at least not via copyright)

Here are some things people often think they can "get a copyright on" that, in fact, cannot be protected by copyright since the creative content is too minimal:¹⁰

- Names (whether of real or fictitious people, pets, organizations, products and so on)
- Individual words or short phrases (including catchwords and catchphrases)
- Titles of creative works

On the other hand, any of these sorts of short expressions might be protected as trademarks.

2.5. "Well, I own the idea, anyway!" ... Nope (at least not if we're talking about just the idea)

Copyright only protects creative expression, not the ideas underlying it.¹¹

That said, it can sometimes be complicated to determine whether one author has borrowed more than just the *ideas* of another.

8 Richard Stim, "What Rights the First Sale Doctrine Gives to a Purchaser of a Copyrighted Work," Nolo, accessed November 17, 2019, <https://www.nolo.com/legal-encyclopedia/the-first-sale-doctrine.html>.

9 Stim.

10 "Circular 33: Works Not Protected by Copyright," 2–3.

11 "Circular 33: Works Not Protected by Copyright," 1.

3. Bad news: You've probably violated copyright at least once in your life ☹️

3.1. Making mix tapes, copying software for a friend, uploading someone else's content to YouTube or Facebook, ...

These are the prototypical violations of copyright. They are what the FBI warnings that you can't fast-forward through are warning you against.

3.2. Photocopying, printing from the Web, ...

For most individuals, your legal ability to photocopy copyright protected material hinges on whether or not the copying falls under Fair Use. Hence, you have to go back to that 4 part test I mentioned in subsection 2.2 (page 2). The lawyers over at FindLaw have a nice rule of thumb¹² to give some limited guidance here. It boils down to something like the Golden Rule:

- If you were the copyright holder and you would object to someone else doing the copying you're about to do, then the copying is likely to be an infringement of copyright.
- However (and this is where the limits on the usefulness of this rule of thumb really show up), even if you decide you'd personally be OK with the copying, you might still be infringing. After all, the actual copyright holder might have different ideas on what they're OK with, and your interests (as copier) bias you towards deciding it's OK to copy.

Copying by libraries and educators (for directly educational purposes) gets a bit more leeway as it has some forms of statutory permission beyond Fair Use. I'll look at this sort of copying next.

3.3. Copying or printing worksheets, coloring pages, name tags for your students, ...

Copyright law¹³ recognizes that teaching might involve using copyrighted materials in ways that society would like to authorize regardless of what copyright holders might desire. So educators can use copyrighted material in more ways than Fair Use would otherwise allow as long they are using the material in certain specific ways. The statute itself is vague on the limits of what is authorized, but various groups of content creators and publishers reached agreements with the academic community on guidelines, and many courts have used those agreements as standards.¹⁴

The general tenor of the guidelines is that the reuse must not be any sort of end run around

¹² "Photocopying and Copyright Law," FindLaw, accessed November 20, 2019, <https://corporate.findlaw.com/intellectual-property/photocopying-and-copyright-law.html>.

¹³ 17 U.S.C. § 110

¹⁴ "Educational Uses of Non-Coursepack Materials," Stanford Copyright and Fair Use Center, April 2, 2013, <https://fairuse.stanford.edu/overview/academic-and-educational-permissions/non-coursepack/>.

purchasing the material. So, for example, under the guidelines for reusing textual material, a teacher can copy a complete article of 2,500 words or less for their class, but they are limited to only 1 such article from a given author and only 3 from that volume of the periodical. Or they could copy 1 cartoon from a given periodical volume.¹⁵

There are further details on what amount of copying is allowed at any given time, but you should note that the sum total of *all* uses of the exemption for a given course must total 9 or fewer for the entire school term, and the material copied should only be copied in that particular term. Indeed, the copying is supposed to be “spontaneous” in the sense that the inspiration to use the material in the course comes only a short time before it is most useful within the course.¹⁶

“Well,” you might say, “this worksheet is short enough to qualify for the exemption.” In fact, though, the guidelines specifically forbid *any* “copying of or from works intended to be ‘consumable,’”¹⁷ so even copying that one worksheet for the class constitutes infringement.

The American Library Association has an [online tool](#) that can help with getting more detailed information about specific educational exceptions. Purdue University has a [Web page](#) that gives examples that illustrate the educational exemptions and Fair Use.

3.4. Showing a movie to entertain the class

The good news about video is that you may be able to show an entire movie to the class. The (possibly) bad news is that the movie has to fit integrally into the course.¹⁸ So a history class might be able to show *Dr. Strangelove* during a unit on the Cold War but probably can’t when working through WWI.

The bottom line is that though the law gives somewhat greater latitude to educational reuse than to more general Fair Use, it maintains the principle that any reuse that goes beyond the incidental needs to comply with copyright, even if the reuse is for education.

4. A whole lotta shades of gray

You’ll have noticed that I’ve tried to hedge most of my claims so far. Some of this is because I am not a lawyer, but even lawyers are notorious for answering every “yes/no” question with “It depends.” In any of its areas law is ambiguous, even when the facts and actions that it is to be applied to are clear and unambiguous. When the facts and actions can also be seen in multiple ways, that only compounds the grayness of the situation.

15 “Circular 21: Reproduction of Copyrighted Works by Educators and Librarians” (U.S. Copyright Office, August 2014), 6–7, <https://www.copyright.gov/circs/circ21.pdf>.

16 “Circular 21: Reproduction of Copyrighted Works by Educators and Librarians,” 6–7.

17 “Circular 21: Reproduction of Copyrighted Works by Educators and Librarians,” 7.

18 “Copyright Exceptions,” Purdue University Copyright Office, accessed November 20, 2019, <https://www.lib.purdue.edu/uco/CopyrightBasics/exceptions.html>.

So when in doubt about whether you are allowed to reuse content, you should probably consult a licensed attorney who practices in copyright law. The next section, though, will talk about ways to find content whose owners have made it clear that you can reuse it and the conditions you'll have to comply with for that reuse.

5. Open Culture: The Public Domain, Creative Commons and Copyleft



The discussion above should leave you with the idea that any reuse of copyrighted material beyond the incidental requires the permission of the copyright holder. Getting that permission can often be straightforward, but you're just looking for some clipart to illustrate the issue of your club newsletter that needs to go out yesterday. What can you do?

There are various repositories of work (and not just images) that make it easy to pay the creators the fees they require for allowing reuse, but I want to talk about Creative Commons licensing which is a collection of licenses creators can use to allow others to reuse their work for free. Creative Commons evolved out of the Free Software¹⁹ Movement. Among the principles of the movement were that end users should be able to see the source code for the software they use, and they should be able to modify it. Moreover, they should not be able to close it off, so those who modified it and made their modified version available had to do so under the same terms. Open Source uses a number of different licenses that conform to those principles, and those licenses are referred to as Copyleft licenses.²⁰

The Open Source licenses worked well for software but were not as good a fit for other creative works, so Lawrence Lessig, Hal Abelson, and Eric Eldred founded Creative Commons to create a family of licenses that would work for the more human oriented works that were coming out of the Open Culture Movement.²¹

Not all of the Creative Commons licenses are fully forms of Copyleft, but they do make it clear that people can reuse the licensed work and what the conditions are for that reuse. There are four components used to define the licenses (given below along with the codes used to abbreviate the

19 Now usually referred to as Open Source since *free* in this context means that people are free to examine and modify the software rather than meaning that there is no charge for obtaining the software. As Open Source/Free Software proponents say, "Free as in speech, not as in beer."

20 "What Is Copyleft?," The GNU operating system and the Free Software Movement, accessed November 21, 2019, <https://www.gnu.org/copyleft/>.

21 "Creative Commons," in *Wikipedia*, November 18, 2019, https://en.wikipedia.org/w/index.php?title=Creative_Commons&oldid=926708208.

components):²²

1. Attribution (by)

The person reusing the work must give a reasonable form of attribution to the work's creator.

2. ShareAlike (sa)

If the reuser makes their work available to others, they must do so under the same conditions.

3. NonCommercial (nc)

Reuse cannot be for a commercial purpose.

4. NoDerivatives (nd)

The work being reused cannot be modified.

There are six licenses built from these components. Additionally, there is a license that creators can use to donate a work to the public domain.

There are a few ways to go about looking for images that can be reused under a Creative Commons license. One is to use a general search engine like Google or Bing and put "Creative Commons" or "Wikimedia"²³ into the search box along with the search terms you're using to get the content you want. Another is to use Creative Commons' [CC Search Tool](#)²⁴

As Creative Commons points out in the "About" page for CC Search Tool, the tool is not a search engine but merely searches for images available in around 20 archives that have been tagged as licensed under some form of Creative Commons license. There is no guarantee that any of the results actually *are* so licensed, so the reuser needs to double check the license status of any images before reusing them.

6. Permissions

The Creative Commons logo is in the public domain with respect to copyright, but it is protected as a trademark of Creative Commons. It is used here under the terms at <https://creativecommons.org/policies#licensing%20statement>.

The Copyleft symbol is in the public domain and has no trademark status.

²² "Creative Commons Licenses," *Creative Commons* (blog), accessed November 21, 2019, <https://creativecommons.org/use-remix/cc-licenses/>.

²³ Wikimedia Commons is not affiliated with Creative Commons, but much of the content hosted there has some form of an Open Culture license for its reuse.

²⁴ <https://search.creativecommons.org/>

The image *A Bold GNU Head* was created by [Aurelio A. Heckert](#) and is used under the terms of the [Creative Commons Attribution-ShareAlike 2.0 Generic \(CC BY-SA 2.0\)](#) License.

It also serves as a trademark for the GNU Project. It is used here under the terms set out at <https://www.gnu.org/graphics/agnuhead.en.html>.

Works cited

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<https://www.lib.purdue.edu/uco/CopyrightBasics/exceptions.html>.
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<https://www.nolo.com/legal-encyclopedia/the-first-sale-doctrine.html>.

Additional resources

Books

- Ellis, Erin L., and Kevin L. Smith, eds. *Coaching Copyright*. Chicago, Ill.: ALA Editions, 2020.
Not held by OCPL

Gasaway, Laura N. *Copyright Questions and Answers for Information Professionals: From the Columns of Against the Grain*. Charleston Insights in Library, Archival, and Information Sciences. West Lafayette, Ind.: Purdue University Press, 2013. Dewey 346.73 GAS

Rodgers, Emily Puckett, and Kristin Fontichiaro. *Shared Creations: Making Use of Creative Commons*. Information Explorer. Ann Arbor, Mich.: Cherry Lake Publishing, 2013. Dewey J 346.04 ROD

A children's book aimed at upper-elementary grades. It gives a good overview of copyright, the public domain, and Creative Commons licensing, and it does at least as thorough a job as many similarly short works aimed at adults.

Websites & Web pages

CC Search. <https://search.creativecommons.org/>

Copyright Advisory Network. "Resources." <https://librarycopyright.net/resources/>

Copyright.gov. "Circulars." <https://www.copyright.gov/circs/>

Copyright.gov. "Frequently Asked Questions about Copyright." <https://www.copyright.gov/help/faq/>

Copyright.gov. "U.S. Copyright Office Fair Use Index," <https://www.copyright.gov/fair-use/>

Purdue University Copyright Office. "Copyright Exceptions." <https://www.lib.purdue.edu/uco/CopyrightBasics/exceptions.html>