

Copyright, CopyLeft, and Creative Commons- using them in your Classes

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Copyright: what is it?

In the US, Title 17 of the US Code governs the 'copy rights' assigned to the creator of an intellectual/creative work. Those rights can be owned, lent, shared, sold, and inherited. The copyright owner (not necessarily the creator) has the exclusive right to do and to authorize others to:

- reproduce the work
- prepare derivative works based upon the work
- distribute copies of the work
- perform/display the work publicly

Copyright law incorporates certain restrictions on those rights.

These rights are invested in any work **as soon as it is put into a fixed form**. No copyright notice or registration is required.

Current copyright persists for a long time-- the **life** of the author **plus 75 years**, or in the case of "**works made for hire**" **95 years** total.

Once copyright expires, the work goes into the **public domain**, where there are generally few or no restrictions. (The exception is derivative works from a public domain work, which are copyrighted to their creator, and material restricted by certain types of licensing.)

Anything **published** before **1923** has passed into the public domain (in the U.S. only.) If it was created but not published, other rules apply; items published between 1923 and 1978 (when the last really big copyright law was passed) vary in their status.

Who owns my stuff?

If you were paid by someone else to create 'intellectual property', they may or may not be able to claim ownership.

If you have contracted with a publisher, you may have given/sold your copyrights to the publisher, with or without specific restrictions related to preprints.

Otherwise, it's yours.

However, the trouble is-- everyone else's work also belongs to either them, their employer, and/or their publisher!

How can I use other people's copyrighted stuff?

Permissions and Licensing

The most straightforward way to use someone else's work is to get their permission. In some cases, if it is an individual and they are relatively friendly, it may be as easy as asking the creator if you can use it. However:

- Not everyone responds to their email
- Not everyone who distributes something turns out to be the legal copyright owner
- Publishers and employers often like to get money in exchange for permissions. This can be expensive and burdensome.

Fair Use

But wait, you say, I've been using copyrighted stuff all my academic life, and the Copyright Police (tm) never came after me!

Partly that's because of the Fair Use limitations on exclusive rights, without which it'd be really hard to have an academic discussion.

17 U.S.C. § 107

Notwithstanding the provisions of sections 17 U.S.C. § 106 and 17 U.S.C. § 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

- the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- the nature of the copyrighted work;
- the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors

In other words, depending on

- what you're using it for and whether you're getting money
- what kind of work you're using
- how much of the work you're using
- how much the owner stands to lose or gain by your use of the work.

Unfortunately, this **four factor test** doesn't yield a hard and fast rule as to when something is fair use and when it's not.

Which is why it's **usually** ok to reproduce multiple paragraphs from a literary work in your paper, but not ok to scan an entire book for your class so they don't have to buy it. Copyright owners, publishers, academics, creators, rights organizations and lawyers are spending a lot of time, especially nowadays, arguing over what constitutes fair use and what is infringement.

There are some guidelines and rules of thumb, but none of them have any explicit legal standing.

Alternatives to standard copyright

So, how can you avoid finding yourself (and Drew) in a legal wrangle over whether your use is fair?

Simple answer: try using materials that are explicitly 'licensed' for free distribution. Two of the most common are CopyLeft (used mostly for software) and Creative Commons.

CopyLeft

Copyleft is a distribution/licensing method often used for free/open source-type software projects. Free, in this case means "free as in free kittens" – you still have to take care of and maintain it yourself – as opposed to free as in free beer.

The GNU Project <http://www.gnu.org/copyleft/> defines it: "Copyleft says that anyone who redistributes the software, with or without changes, must pass along the freedom to further copy and change it."

- Anyone can edit, change or distribute it without explicit additional permission.
- No one can place proprietary restrictions on any 'derivative works' – edited or changed versions – made from the work in question.

Usually Copyleft uses the GNU General Public License: <http://www.gnu.org/copyleft/gpl.html>. The license requires that you include a copy of that license with your program. There is also a GNU Free Documentation License (GFDL) <http://www.gnu.org/copyleft/fdl.html> license.

If I use Copyleft, GNU public license material what's my responsibility? Basically, you can't license the material, or any derivative of the material, such as your course pack, yourself as proprietary. You can charge something for providing a copy, but you can't stop other people from making copies of it. Which makes it tricky to combine material with more restrictive licenses with CopyLeft material.

Creative Commons

Creative Commons is a licensing scheme for free(ish) content that is used both for content and for software. <http://creativecommons.org/>

This licensing scheme is designed to, as the Creative Commons organization puts it, provide "a simple, standardized way [~]heise:for creators] to keep their copyright while allowing certain uses of their work."

Creative Commons licenses have several options (<http://creativecommons.org/licenses/>).

- All Creative Commons licenses require that the user provides **Attribution (BY)**-- that is, identifies the copyright owner of the work. No plagiarism allowed!
- The **No Derivatives (ND)** option restricts other people from preparing things based on the work (derivatives)
- The **NonCommercial (NC)** option allows people to prepare derivative works using the work, but not to distribute them commercially.
- The **ShareAlike (SA)** provision allows users to create derivative works from the work, but the derivatives must be released under the same Creative Commons license as the original.

There's a nice license chooser available: <http://creativecommons.org/choose/>

Finding Creative Commons Educational Resources

- Creative Commons itself links to some educational projects: <http://creativecommons.org/education> including MIT OpenCourseware.

- The Open Educational Resources' OER Commons also provides links to courseware: <http://www.oercommons.org/>
- as does Connexions <http://cnx.org/> , an educational module repository hosted at Rice University.

The Basic Guide to OER, <http://www.col.org/PublicationDocuments/Basic-Guide-To-OER.pdf>, Prepared by Neil Butcher for the Commonwealth of Learning & UNESCO, has these further suggestions:

1. Use a specialized OER search engine: While search engines such as Google and Bing are a good general starting point for finding content online, there are also some specialized search engines that search specifically for OER. Their listings, however, are selective based on different search criteria so it is a good idea to try more than one. Here are a few of the popular ones:

- Global Learning Objects Brokered Exchange (GLOBE) Alliance: <http://www.globe-info.org/>
- Folksemantic: <http://www.folksemantic.com>.
- DiscoverEd: <http://discovered.labs.creativecommons.org/search/en>.
- Creative Commons Search: <http://search.creativecommons.org>.
- Open Courseware Consortium: <http://www.ocwconsortium.org/courses/search>.

2. Locate a suitable OER repository: Searchers should also access the major OER repositories to search for OER. Most are institutionally based, focusing on the materials released by that organization. A famous example is the Massachusetts Institute of Technology Open Courseware Repository (MIT OCW). Some repositories, such as MedEd PORTAL, have a specific subject focus, in this instance, medical photos and multimedia. Below are a few of the more significant OER repositories (with many more described in Appendices Five and Six [~jheise:of the Basic Guide to OER]):

- OpenLearn: <http://openlearn.open.ac.uk>.
- MedEd PORTAL: <http://services.aamc.org/30/mededportal> (medical focus).
- MIT OCW: <http://ocw.mit.edu>.
- China Open Resources for Education (CORE): <http://www.core.org.cn/en>.
- AgEcon Search: <http://ageconsearch.umn.edu> (agricultural focus).
- Teacher Education in sub-Saharan Africa: <http://www.tessafrica.net> (teacher education focus).

3. Use OER directory sites: There are many sites that have a search facility whose results point to places elsewhere on the Internet where resources match search criteria. They themselves do not act as a repository, but have identified quality resources and store them in a database of web links. Their databases usually have a particular focus. In the case of OER Africa, for example, they highlight quality resources developed in and about Africa. Here are just a few (with many more provided in Appendices Five and Six [~jheise:of the Basic Guide to OER]):

- OER Commons: <http://www.oercommons.org>.
- Commonwealth of Learning: <http://www.col.org/OER>.
- OER Africa: <http://www.oerafrica.org>.

If you're interested in more information about Open Educational Resources, we can highly recommend the website for the online course: Open Content Licensing for Educators: http://wikieducator.org/Open_content_licensing_for_educators/Home