

COPYRIGHT AND FAIR USE

INTRODUCTION

In this document we draw some distinctions, offer some guidelines and tools, and point to some key resources on issues related to copyright and fair use. This document is not a definitive document written by legal experts. Individuals are encouraged to consult with others, including legal representation, to address specific questions or concerns.

Copyright is the legal right to reproduce, publish, sell, or distribute the matter and form of something (as a literary, musical, or artistic work). **Fair use** is a legal doctrine holding that portions of copyrighted materials may be used without permission of the copyright owner provided the use is fair and reasonable, does not substantially impair the value of the materials, and does not curtail the profits reasonably expected by the owner (Merriam-Webster).

COPYRIGHT ISSUES FOR PRINT

Although use of copyrighted material can many times be considered fair use in nonprofit, educational situations, there is no “educational use umbrella” that allows instructors to use anything and as much of it as they want.

- Purpose
- Nature
- Amount
- Effect on market value

The “four factors” that need to be considered are **purpose** (e.g., educational or commercial, temporary vs. repeated), the **nature of the original** (e.g., biography vs. fiction), the **amount** (or percentage of the whole, or how central the borrowed portion is to the whole), and whether the **market value** of the original could be diminished.

Fair use will typically not apply when an instructor uses a copyrighted work in its entirety or uses the “heart of the work” (its main points or arguments, or what makes the work distinctive). Such situations are particularly dangerous when use in the course could replace sale of the copyrighted work, and when an affordable licensing mechanism is available for using the work or portions of it. Exceptions might be those cases where use is onetime only.

Repeated or long-term use of copyrighted material without permission is very unlikely to be fair use. The argument that the use is spontaneous and in response to current news will not appear credible in the case of material that is used repeatedly across several semesters of course offerings.

When considering whether a planned use of copyrighted material is fair use, consult the Copyright Checklist (https://blogs.extension.wisc.edu/copyright/files/2016/06/fairuse_checklist.pdf). The Checklist does not offer a mathematical reckoning that will tell you indisputably whether a use is fair use, but it will help you explore the issues. We recommend that you keep a filled-out copy of the Checklist with your records for the course and that you forward one to your instructional designer. Diligent record keeping allows us to show that we make a good-faith effort to engage in fair use.

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REQUESTING PERMISSION

If you can't avoid using copyrighted material, how do you go about getting permission? On the Internet, search for either "permission request form" and the medium of your material (music, text, image) or "permission request form" and the publisher/copyright holder of the material. Your instructional designer can assist you with requesting permission.

IMAGES AND AUDIOVISUAL RESOURCES

Whenever possible, link to an image on its source page rather than duplicate the image in a course. For best practices and a simplified, effective guide, see UW Extended Campus's tip sheet on finding and using images from the Internet ("Using Fotolia Images"), in Resources, below. For greater detail, try any of the many university copyright crash courses or cheat sheets available on the Web (e.g., those by the universities also listed in Resources).

WHAT STUDENTS SHOULD KNOW (FOR PROJECTS YOU MAY ASK THEM TO DO)

You may want to warn students of fair use issues. While your instructions may vary with the specific assignment, generally speaking you may want to advise them about fair use just as you would about other issues (e.g., plagiarism) that may arise as they complete papers and projects for the course. Your instructional designer can offer suggestions.

RESOURCES

University of Wisconsin Extended Campus

- Using Fotolia Images: <https://ce.uwex.edu/wp-content/uploads/2015/02/Fotolia.pdf>
- Copyright Checklist (keep a copy with your course records): https://blogs.extension.wisc.edu/copyright/files/2016/06/fairuse_checklist.pdf
- COOP Extension (copyright information page; source of our Copyright Checklist): <https://blogs.extension.wisc.edu/copyright/>

University of Wisconsin-Madison Libraries

- Basics: <https://www.library.wisc.edu/about/scholarly-communication/copyright/copyright-basics/>
- How to Use Others' Materials: <https://www.library.wisc.edu/about/scholarly-communication/copyright/using-copyrightable-materials/> (see more about Fair Use on this page)

University of Minnesota Libraries

- Updated copyright page: <https://www.lib.umn.edu/copyright/welcome>
- Copyright and a four factors checklist: <https://www.lib.umn.edu/copyright/fairthoughts>

University of Texas Libraries

- Four factors and more: <http://copyright.lib.utexas.edu/copypol2.html>

Stanford University

- In-depth coverage: <http://fairuse.stanford.edu/>