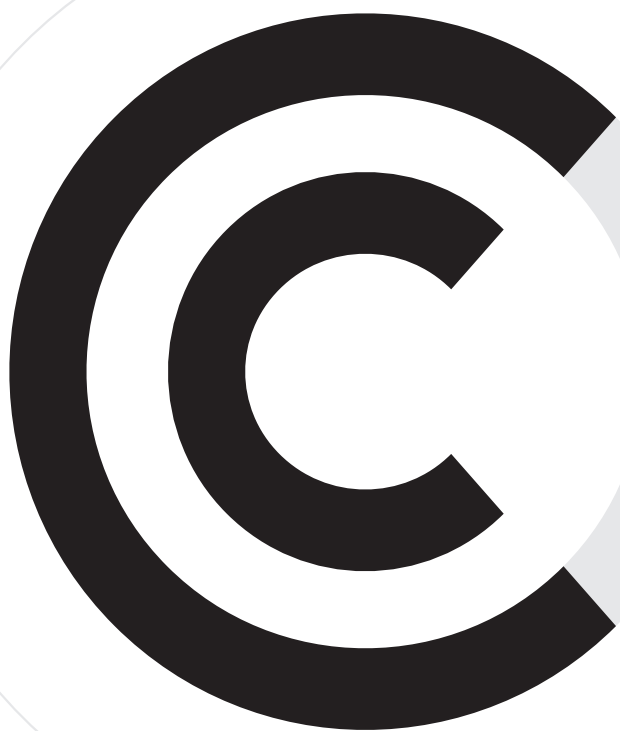


Know Your Copy Rights™



Using works in your teaching —

What You Can Do

Tips for faculty & teaching assistants in higher education

Know Your Copy Rights™

Use Your Copy Rights

In your teaching, you probably confront questions about how to share legitimately with your students articles, video, music, images, and other intellectual property created by others.

Sorting out what you can or can't do is often confusing. Lack of clear-cut answers may translate into delays, doubts, fear of liability, and decisions to err on the side of caution and non-use.

But frequently you do not need to get permission or pay a fee. Use rights may have been licensed by your library or reserved under law.

This brochure offers you some tips on when works can be used lawfully in your teaching without requesting permission or incurring additional cost.

Keep It Simple — Link When Possible

In many cases, you can eliminate the need for permission or fee by simply giving your students a link to the work instead of making copies of it. For example:

- Your library already may have paid for a subscription license that entitles you and your students to online access. Check your library's Web site to see if the work you wish to use is available there without charge.
- Even if your library hasn't purchased access, the work may be available for free on a legitimate Web site, such as your institutional repository or another online open archive, the author's homepage, or an open access journal. Most sites allow students to print a copy for personal use.
- If your library has not licensed access and you can't link to the work for free, contact the library's electronic reserves department about whether they can arrange access for your students.

Consider retaining the rights you need to place your own work in an open archive and share it with your students. The SPARC Author Addendum (www.arl.org/sparc/author/) is one means of securing these rights.

When Linking Won't Do

If linking isn't the answer, there's still hope. Here are several common situations in which you are free to make copies for your students or use works in the classroom without permission or fee:

■ Uses permitted by license

Use of electronic resources today is commonly governed, not just by copyright, but also by licenses between owners and users. Your use rights can differ from license to license. Commonly a publisher's or aggregator's license with a research library will allow faculty and their students to:

- Print a reasonable amount of a work.
- Share it with other authorized users covered by the license (typically, all faculty and enrolled students are authorized users).

With the potential for creators to offer their works directly to users on the Web, use of Creative Commons licenses is growing (www.creativecommons.org). Using a Creative Commons notice, creators specify the rights conveyed to users — such as to copy, distribute, display, and perform the work, provided attribution is given.

■ Fair uses

When the circumstances might reasonably be judged as fair, you may use copyrighted works in your teaching without obtaining permission. US law lists four fair use factors — described in the shaded area at right — that will help you evaluate whether your use is permitted. Here are a few examples of uses that are generally regarded as fair:

- copying reasonable portions of longer works for your class;
- copying a timely article (or one you've recently discovered that is relevant for your class) when

Fair Use — Weigh Your Rights

it's unreasonable to expect a sufficiently rapid reply to a request for permission; and

- copying a graphic or an image from a work to display in your lectures.

■ Public domain

Works in the public domain are not protected by copyright, so you can use them freely. Here are examples of public domain works:

- Under US law, copyright expires 70 years after the death of the author. At that point, works automatically enter the public domain. As a practical matter, all works published in the US before 1923 are now in the public domain.
- Works by the US Government or created by its employees as part of their job are in the public domain. Note, however, that this does not apply to most works by federal grant recipients or contractors or to works of most other governments, including state and local governments.

Before You Pay for Use Rights

Check with your library to explore whether your use rights have already been paid for or whether there are alternatives to paying a fee.

To ensure a balance of the rights of copyright owners and the public interest, the law allows you to use copyrighted works without permission — regardless of medium — when evaluation of the circumstances suggests the use is fair.

This “fair use” provision of copyright law doesn’t provide hard and fast rules to tell you whether a use qualifies as fair. Instead, the unique facts regarding a use lead you to a reasoned conclusion.

Your evaluation should weigh four factors:

- 1. Purpose and character:** If your use is for teaching at a nonprofit educational institution, this is a factor favoring fair use. The scale tips further in favor of fair use if access is restricted to your students.
- 2. Nature of copyrighted work:** Is the work fact-based, published, or out-of-print? These factors weigh in favor of fair use.
- 3. Amount used:** Using a small portion of a whole work would weigh toward fairness. But sometimes it may be fair to use an entire work (such as an image) if it is needed for your instructional purpose.
- 4. Market effect:** A use is more likely to be fair if it does not harm the potential market for or value of the copyrighted work. But if it does, this could weigh more heavily against fair use than the other factors.

Consider each of these factors, but all of them do not have to be favorable to make your use a fair one. When the factors in the aggregate weigh toward fairness, your use is better justified. When the factors tip the scales in the other direction, your need to obtain permission from the copyright holder increases.

Don’t worry that the answer isn’t crystal clear. Just decide whether the factors weigh enough toward fairness so that you are comfortable not seeking permission. Some suggest reliance on the “golden rule” — if you were the copyright holder, would you see the use as fair and not expect to be asked for permission?

Displaying or Performing Works in Your Classes

Copyright law makes special provision for displaying images, playing motion pictures or sound recordings, or performing works in classes.

■ Face-to-face teaching

You may display or perform a work in your class without obtaining permission when your use is:

- for instructional purposes;
- in face-to-face teaching; and
- at a nonprofit educational institution.

If you don't meet all three of these criteria, consider whether what you have in mind is a fair use.

■ Distance education

Although a specific copyright exemption known as the TEACH Act* may apply, its rigorous requirements have prompted most instructors to rely primarily on fair use to display or perform works in distance education (e.g., online or over cable TV).

To evaluate the fair use option, weigh the four factors described at left. If you judge the use to be fair, you may use the work in your class.

In all cases, the copy of the work that is displayed or performed must have been lawfully made. That means, for example, you can display a video borrowed from your library's collection.

* Consult your library or the university counsel on whether and how the TEACH Act is implemented locally. For a closer look at your rights to transmit works to a distance education class, see the North Carolina State University TEACH Toolkit at www.lib.ncsu.edu/scc/legislative/teachkit/.

Instructors Ask

■ *Can I show a movie in class that I've rented from my home movie rental provider?*

Yes, providing the movie is shown for educational purposes and such an educational use is not prohibited by the license agreement you signed with the rental provider.

■ *I've used an article as a standard reading in the past and my students have paid to include it in their course packs. But recently the library has licensed a database that includes the article. Does that change things?*

Yes. Instead of including the article in the course pack, now you can simply link to it in your syllabus and encourage students to use it online.

■ *What about articles that aren't licensed by the library — how do I share them with my students?*

Here are several options:

- If the article is available online via open access, share a link to it.
- If a Creative Commons notice appears on the article, you may share the work with your students.
- If the article is in the public domain, you're free to share it.
- Consider whether use of the work is a fair use.
- Ask the library about putting the article on reserve.
- Ask the library to license an online subscription if there is sufficient campus demand.
- Ask the copy center to license the work for sale of print copies.
- License the work yourself using your institution's courseware.

Get answers to more of your copyright questions at the ARL "Know Your Copy Rights" FAQ: www.knowyourcopyrights.org/faq/.

What You Can Do



Often you can use works in your teaching without permission or fee.

This chart highlights some of those situations. However, there are other circumstances where permission and/or fee are required (for example, when some types of works are included in course packs). Check with your institution's library or legal office for information about campus copyright policies.

Know Your Copy Rights™		Proposed Use			
		Exhibit materials in a live classroom?	Post materials to an online class?	Distribute readings?	Create electronic reserves?
Legal Status of Work To Be Used	Works Not Copyrighted	Yes	Yes	Yes	Yes
	Public Domain Works (US Govt. and pre-1923 works, and certain other works)				
	Your Own Works (if you kept copyright or reserved use rights)	Yes	Yes	Yes	Yes
	Open Access Works (works available online without license, password, or technical restrictions)	Yes	Link	Link	Link
	Electronic Works Licensed by Your Institution (depends on license, but usually permitted)	Yes	Link	Link (Most licenses also allow students to make an individual copy.)	Link
	Electronic Works with a Creative Commons License (depends on license, but usually permitted; if not, LINK)	Yes	Yes	Yes	Yes
Copyrighted Works	Other Works (when none of above apply)	Yes	Yes, if meets either TEACH Act or Fair Use standards. If not, LINK or seek permission.	Yes, if meets Fair Use standards. If not, LINK or seek permission.	Yes, if meets Fair Use standards. If not, LINK or seek permission.

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