

COPYRIGHT FAQs – FREQUENTLY ASKED QUESTIONS

What is copyright?

Copyright is an intellectual property right grounded in the U.S. Constitution. It applies to original works of authorship fixed in a tangible medium of expression. Copyright protects, for example, literary, dramatic, musical, and artistic works, such as paintings, sculptures, poetry, novels, movies, songs, computer software, and architecture. Copyright covers both published and unpublished works. With several exceptions, copyright protection exists from the moment of creation and lasts until 70 years after the death of the creator.

How is copyright different from a patent or a trademark?

Copyright protects “original works of authorship,” while a patent protects inventions or discoveries. Copyright protects creative expression, whether that expression is in the form of a painting, a book, or a sculpture. A trademark protects words, phrases, symbols, or designs identifying the source of the goods or services of one party and distinguishing them from those of others.

Who owns a copyright?

There are many types of ownership possibilities. Generally, the original author/authors own the copyright in the work (when they pass away, their heirs generally inherit it). If the work was one that was a "made-for-hire" then the employer owns the copyright. There may be a sharing of copyright interests. Many publishers require authors to transfer the author's ownership to them.

What is a work-for-hire?

If you prepare a work as within the scope of your employment (a work made for hire) your employer might be the owner of all copyright in the work. Also, if you prepare a commissioned work for certain uses and you expressly agree in a signed written instrument, the work may be considered a work made for hire, and the commissioning party may own the copyright.

What rights does a copyright owner have?

Generally, the copyright owner has the exclusive right to and to authorize others to:

1. Reproduce the work;
2. Prepare “derivative” works based on the work;
3. Distribute copies of the work;
4. To perform the work publicly, in the case of, for example, musical works;
5. Display the work publicly, in the case of, for example, musical works; and
6. In the case of sound recordings, to perform the work publicly by means of a digital audio transmission.

What is a derivative work?

A derivative work is a copyrightable work that is based on one or more existing works. Only the holder of the copyright of the original can produce or give permission to another to create the next version. A derivative work usually involves a transformation. For example, a film based on a book is likely a derivative work.

What is not protected by copyright?

Copyright protects expression. Copyright does not protect ideas. Copyright does not protect facts, systems, or methods of operation, although it may protect the way these things are expressed. Copyright does not protect titles, names, short phrases, slogans, familiar symbols or designs, mere variations of typographic ornamentation, lettering, coloring, or mere listings of ingredients or contents.

Copyright also does not protect works for which the copyright term has expired. These works are now in the public domain and may be used without restriction.

What is the public domain?

Public domain works are those that can be used without permission. The copyright has expired. All copyright terms are limited, so all works will eventually become public domain works. But copyright terms are lengthy, and it can be difficult to determine if an item is still protected or is in the public domain. This chart, developed by Cornell University, will help determine if an item is still copyright-protected, or if it is in the public domain (http://www.copyright.cornell.edu/public_domain/).

All works published before 1923 are now in the public domain. For works created after January 1, 1978, copyright protection generally begins at the moment of creation and lasts 70 years after the death of the author.

Do I have to register my work to receive copyright protection?

No. In the United States, copyright protection automatically exists from the moment the work is created. However, it is suggested to register your work with the U.S. Copyright Office, especially if you plan to publish your work or make it publicly available.

Why should I register my work if copyright protection is automatic?

Registration is recommended for a number of reasons. Many choose to register their works because they wish to have the facts of their copyright on the public record and have a certificate of registration. Registered works may be eligible for statutory damages and attorney's fees in successful litigation. Finally, if registration occurs within five years of publication, it is considered prima facie evidence in a court of law.

How do I register for copyright protection?

U.S. copyright registration requires paying a small non-refundable filing fee, depositing a copy of the work, and filling out a form. You can find more information, or register your works online, on the U.S. Copyright Office's website (<http://www.copyright.gov/>).

What is a copyright notice? Do I need to put one on my work?

A copyright notice is placed on work in order to inform others of copyright ownership. You may place a copyright notice on your work even if your work is not registered with the copyright office. A copyright notice generally consists of the word "copyright" or the symbol "©", the name of the copyright owner, and the year of first publication, for example, © 2007 John Doe. In the United States it is not necessary to mark your piece as being copyrighted, although it is suggested. Just because a work does not have a copyright marking or copyright notice does not necessarily mean it is in the public domain and free to use without obtaining prior permission.

What is fair use?

Fair use is a limitation on the exclusive rights of copyright holders, for the purposes of criticism, comment, news reporting, teaching, scholarship, research and parodies. Fair use allows consumers to make a copy of part or all of a copyrighted work, even where the copyright holder has not given permission, or even objects to your use of the work.

Under fair use, how much of someone else's work can I use without getting permission?

There are no legal rules permitting the use of a specific number of words, a certain number of musical notes, or percentages of a work. Whether a particular use qualifies as fair use depends on the circumstances. Fair use is decided on a case by case basis, after balancing the four factors listed in section 107 of the Copyright statute. The factors to be considered include:

- a. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes -- Courts are more likely to find fair use where the use is for noncommercial purposes.
- b. The nature of the copyrighted work -- A particular use is more likely to be fair where the copied work is factual rather than creative.
- c. The amount and substantiality of the portion used in relation to the copyrighted work as a whole -- A court will balance this factor toward a finding of fair use where the amount taken is small or insignificant in proportion to the overall work.
- d. The effect of the use upon the potential market for or value of the copyrighted work -- If the court finds the newly created work is not a substitute product for the copyrighted work, it will be more likely to weigh this factor in favor of fair use.

If my use is intended for legitimate educational purposes, then that's fair use, right?

No, not necessarily. There are limits in fair use provisions on how much copyrighted material can be used by educators, and to what purpose. For faculty to legally use a work without getting permission:

- The amount used must be limited;
- The content must not be used too many times semester after semester;
- It can't be distributed to too many people (for free or for a charge); and
- It must not harm the potential market for the copyrighted work.

So, scanning a whole textbook and posting it in Blackboard™ is not a fair use. Ripping copies of a music CD to give to all your students is not a fair use. Making copies of a workbook or other consumable item, so your students won't have to buy it, is not a fair use.

Anything on the web is "public domain," right?

No. The "public domain" has nothing to do with how publicly accessible something is on the Internet. Copyright owners still retain all rights to materials they post on the Web, unless they specifically grant permission for it to be used. Copying someone else's materials from the Internet and posting or publishing them elsewhere may be a copyright infringement.

Is linking to something on the Web a copyright violation?

When you create a hyperlink from one Web page to another, you have not made a copy of the original work, so this is not a copyright violation. Generally, you are also not expected to request permission to link to a Web page, though it is often considered courteous to do so.

Can I use out-of-print books however I want? Aren't they in the public domain?

No. Many out-of-print books are still protected by copyright. Just because a book is out-of-print, this does not diminish the rights granted to a copyright holder. Institutions, individuals and libraries cannot make copies or utilize still-copyrighted, out-of-print materials to any greater extent than it can works that are currently being published and sold.

How can I legally use film, audio, photographs, and print in a multimedia project or presentation, such as a PowerPoint?

In 1996, a Congressional subcommittee on intellectual property published a report called the Fair Use Guidelines for Educational Multimedia which can be found at <http://www.utsystem.edu/ogc/intellectualproperty/ccmcguid.htm>. While these guidelines are not law, they have become commonly accepted standards followed by educational institutions and the courts. Under these guidelines you may make fair use of copyrighted digital media for specific educational multimedia, but there are strict limitations. Because digital media is easily

reproduced and distributed, the fair use limitations on digital media are more stringent than fair use guidelines for other media. Users are restricted by time (the same elements in the multimedia presentation may not be used for more than two years), portion (only a small amount of a work may be used – these are specifically defined in the guidelines), and distribution (the multimedia project may not be distributed or copied widely).

The guidelines cover educational material that is created by faculty as part of curriculum-based instruction, or by students as part of an assignment, whether face-to-face, self-directed study, or at a distance. The guidelines also provide provision for inclusion of copyrighted multimedia as part of conference presentations or professional portfolios.

I have purchased or rented a film from a home video outlet. Can I use this in my classroom?

Yes, in many cases, purchased or rented films or video programs may be used in a face-to-face classroom session. However, there are very convoluted limitations on digitizing videotapes, creating streaming film from DVDs, duplicating films, editing films, and using digital films on Blackboard or for distance education. For more information about copyright restrictions with regard to film and video, see Xavier’s Copyright Guidelines for Film and Video (http://www.xavier.edu/library/help/copyright_video.pdf).

I found this great photograph in a print journal. Can I digitize it and make it available to students?

First, check to see if the image you wish to digitize is readily available online or for sale or license at a fair price. If it is, link to it, purchase or license the image. If it is not available digitally already, you may digitize the image if it is to be used for educational purposes such as face-to-face teaching or research and scholarly activities (such as lectures, presentations at conferences, etc.). Provide attribution to the source if available. If using the image for teaching, access must be limited to students who are in the class, and you must include a copyright warning indicating that the image is not to be downloaded or used further. The digital image may not be distributed widely nor posted to the public internet. For more information about digital images, see Xavier’s Copyright Guidelines for Digital Images (http://www.xavier.edu/library/help/fair_use_images.cfm).

What can I use for distance education and online courses?

The TEACH Act, which became law in 2002, expands the scope of educators' rights as far as distance education and online courses. It permits educators to perform and display portions of copyrighted works in online courses, to digitize and use digital media in these courses, and to make digital copies for distance education. This is intended to make online education more analogous to face-to-face teaching, and to increase its effectiveness and flexibility. However, there are very strict limits in TEACH on what can be used, who can access the material, and for how long. For information about whether your use is acceptable according to the TEACH Act:

- Please see ALA's site (<http://www.ala.org/Template.cfm?Section=distanceed&Template=/ContentManagement/ContentDisplay.cfm&ContentID=34705>),
- Review Xavier's copyright resources online (<http://www.xavier.edu/cm/copyright/index.cfm>), or
- Ask Xavier's Copyright Officer to investigate for you (filiatreaua@xavier.edu).

Can't I put anything I want up in my Blackboard course, or on e-reserves? After all, these are limited just to students in the class.

No. E-reserves and Blackboard are excellent ways to provide easy access to resources such as syllabi, problem sets, readings, lecture notes, or periodical articles for your students, but there are limitations on how these can be used, under fair use provisions and the provisions of the TEACH Act. Again, there are limitations on what portion of the whole can be used, how many times it can be used, and who is given access to the material. For example, it is not compatible with fair use to scan an entire copyrighted book and add it to a Blackboard site, as this potentially limits the market for this book. There are many uses that may require the faculty member to request, and in some cases pay for, permission to use a copyrighted resource in e-reserves or Blackboard.

If possible, it is best to link to a resource already available to the library through an electronic journal or database – since we have licenses for these, it is acceptable to link to this content.

For more information about Blackboard and e-reserves, please see Xavier's copyright resources online (<http://www.xavier.edu/cm/copyright/index.cfm>), or contact the Information Resources Center staff (<http://www.xavier.edu/ds/dscontact.cfm>).

What is copyright infringement?

Generally, copyright infringement occurs when a copyrighted work is reproduced, distributed, performed, publicly displayed, or made into a derivative work without the permission of the copyright owner.

Somebody infringed my copyright. What can I do?

A party may seek to protect his or her copyrights against unauthorized use by filing a civil lawsuit in Federal district court. If you believe that your copyright has been infringed, consult an attorney. In cases of willful infringement for profit, the U.S. Attorney may initiate a criminal investigation.

How can I allow someone to use my work?

One easy way to share your work with others while keeping your copyright is to assign a Creative Commons license to your work. Creative Commons (<http://creativecommons.org/>) is a

nonprofit corporation dedicated to making it easier for people to share and build upon the work of others, consistent with the rules of copyright.

Creative Commons provides free tools and ready-made licenses that let authors, scientists, artists, and educators easily mark their creative work with the freedoms they want it to carry. You can use Creative Commons to change your copyright terms from 'All Rights Reserved' to 'Some Rights Reserved.' With a Creative Commons license, you keep your copyright but allow people to copy and distribute your work provided they give you credit — and only on the conditions you specify (<http://creativecommons.org/learn/licenses>).

A copyright owner can also enter into an agreement with another individual to permit use of his/her work. Copyrights are transferable.

What about international copyright? Are my copyrights valid in other countries?

The United States has copyright relations with most, but not all, countries throughout the world, and as a result of these agreements, the U.S. honors certain other copyrights and many countries honor ours. For a listing of countries and the nature of their copyright relations with the United States, visit the U.S. Copyright Office (<http://www.copyright.gov/>) and see Circular 38a, *International Copyright Relations of the United States* (<http://www.copyright.gov/circs/circ38a.pdf>).

Where can I get more information?

For more information on copyright law visit the U.S. Copyright Office's web site (<http://www.copyright.gov/>), review Xavier University's copyright resources online (<http://www.xavier.edu/cm/copyright/index.cfm>), or, for an answer to a specific question, please feel free to contact Xavier's Copyright Officer:

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