

Haverford College Libraries

Copyright Resource Guide

1. Introduction

a. What is copyright?

Copyright is a type of intellectual property protection grounded in the U.S. Constitution and granted by law (1) for original works of authorship which are (2) fixed in a tangible medium of expression. Thus, copyright covers both published and unpublished works. Copyright can exist in multiple layers. For example, think of a CD: artwork, posters, lyrics, musical composition, public performance, radio performance, etc. Each has its own copyright specificities.

Copyright laws originate in the U.S. Constitution and are in place to protect the intellectual property rights of the creator.

b. A note about intellectual property

Intellectual property is a collective term referring to a body of laws related to products of the mind (developed through human ingenuity and creativity) which has potential commercial value. This includes copyright.

2. Usage

a. Types of permissions/limitations

i. Public Domain

If the work is in the public domain you may use it freely. How can you tell if a work is in the public domain? Peter Hirtle's [Copyright Term and the Public Domain](#) is an authoritative source for determining whether a resource has passed into the public domain. Publications of U.S. government agencies are in the public domain.

ii. Creative Commons

Creative Commons is a non-profit organization that has developed a series of licenses authors can assign to their works in order to promote uses that extend beyond those granted by copyright law. The particular license ascribed (e.g., CC BY-NC = attribution and noncommercial uses only) indicates the bounds within which use of the licensed material must occur. Definitions of Creative Commons licenses are available at <https://creativecommons.org/licenses/>.

iii. Licensed resources

If the work is licensed through the Libraries—that is, there is a record for it in Tripod that enables access—the license contract for the resource rather than copyright law determines legal use of that work. In most cases, the contract permits use of the resource in Moodle. Contact your subject liaison to determine the authorized uses of information resources licensed by the Libraries.

iv. Copyrighted works

- **Fair use**

The fair use provisions of the Copyright Act of 1976 allow certain uses of a work without prior contact with (or payment to) the copyright holder. Note that many, but not all, academic uses come under this heading. The criteria for whether fair use applies to one's use of a copyrighted work is determined by the cumulative assessment of these four factors:

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

Refer to the [Fair Use Checklist](#) to determine for yourself whether your proposed use falls within the fair use guidelines.

- **Orphan works**

Orphan works are copyrighted works whose owners are difficult to identify, thus making it nearly impossible to obtain permission for use. It is risky to use an orphan work unless your use is fair—that is, unless it passes the four criteria in section 107 of the Copyright Act of 1976.

b. Ways the Libraries can help

i. Checking whether we have a license for the material

The subscriptions that the Libraries pay often include a license to use the material. If you have questions about material consult your subject liaison(s) and they will check our subscriptions.

ii. Fair use interpretation

Though there are a myriad of cases that permit use under the Fair Use clause, It is not unusual for people to have questions as to whether their specific case qualifies. Librarians are prepared to help you discern the answer to your question, and where greater complexity requires additional interpretation, we are prepared to help you navigate next steps.

iii. Securing rights

There are a variety of means of securing rights to a copyrighted work

in those cases where Fair Use does not apply.

The [Copyright Clearance Center \(CCC\)](#) provides a service for a fee to secure usage. The Libraries take advantage of this service after determining that we do not have either a license for use or when usage falls outside of Fair Use.

Alternative actions are also possible. For example, working directly with a publisher or the rights holder to secure permission is another avenue the Libraries have explored on behalf of faculty.

When payments are required, the Libraries will work with faculty to find a solution.

iv. **Contacting rights holders**

Those holding a copyright may waive some or all of their rights. Sometimes you can get permission to use a work simply by asking the copyright holder.

3. Author's Rights

Copyright protection is immediately vested in works of authorship. U.S. copyright law grants exclusive rights to authors to do the following (except in cases where fair use prevails):

- a. Reproduce the work
- b. Distribute the work
- c. Prepare derivative works
- d. Publicly display the work
- e. Publicly perform the work

Most author agreements, however, effect the legal transfer of copyright—and the exclusive rights thereof—from author to publisher, in exchange for the reproduction and distribution services provided by publishers. While print distribution is no longer the primary means of distributing scholarly journal articles, the traditional transfer of copyright agreement persists, to the detriment of authors who would like to use their work in ways that may not be possible absent retention of copyright.

The Scholarly Publishing and Academic Resources Coalition's (SPARC) [author addendum](#) is a useful tool for retaining rights, while granting publishers non-exclusive rights to your work. Another means of preserving your rights in the works you author is to submit them for publication in Open Access journals, where a Creative Commons license can be applied, that both preserves your author rights while also granting enhanced privileges to those who wish to use your scholarship.

If you forego a publisher, it's still a good idea to apply a Creative Commons license or otherwise make clear the parameters by which others can use your work.

What if your copyright is infringed?

The penalties for copyright infringement can be severe, ranging from \$750–\$150,000 per infringement.¹ Consulting an intellectual property attorney on your particular case may be appropriate, especially if you believe the infringement is harming the revenue you would otherwise earn from your work.

Student authors and copyright

Students maintain the copyright to all academic work they produce. Copyright ownership usually shifts, however, when a work is produced by a student who is creating it in their capacity as an employee of the College. Haverford's [Intellectual Property Policy](#) provides additional guidance in this area.

Creative Commons

Creative Commons (CC) is a licensing mechanism that enables authors to set permissible uses of their works. CC licenses often expand the range of permissible uses, but unlike traditional licenses, can never reduce or eliminate rights granted by the fair use provision of the copyright law. If you want to use a resource governed by a CC license, consult the organization's [licensing page](#) to determine allowable uses.

Open Access

SPARC defines Open Access as “the free, immediate, online availability of research articles, coupled with the rights to use these articles fully in the digital environment.”² While this definition focuses on journal articles, information resources of all types (ebooks, software, datasets, etc.) can be made Open Access, usually by applying the Creative Commons Attribution-Only (CC-BY) license to the work. Such works can be reused by faculty and students for any purpose provided attribution is given to original author.

4. Use cases

Format: Text

- i. **I'm teaching a course and there are several articles from a particular journal I want to assign. Can I post them to Moodle?**

¹ Ferullo, Donna L. (2014). *Managing Copyright in Higher Education: A Guidebook* (Lanham, MD: Rowman & Littlefield), 17.

² <http://www.sparc.arl.org/issues/open-access>

You can create PDF files of the articles and upload them to Moodle. This will ensure convenient access for your students. (No more than one article per issue, please.) If the Libraries do not hold a subscription to the journal, determine whether or not this falls under fair use. If it does, you may scan the article and upload it to Moodle.

ii. **I'm teaching a course next semester and I want to put my personal copy of the textbook on reserve – is this okay?**

Yes, but the Libraries would be happy to order the book in question for you and place it on reserve for your students so you can hold onto your personal copy.

iii. **I'm teaching a course and I want to put articles from an e-journal I subscribe to up on Moodle. Can I post PDFs of these articles there?**

Check with us first, we may have a licensed copy. If we have a copy, then you will need to put that link on the Moodle page. See section viii. for more information.

iv. **I'm a faculty member on sabbatical and in another country. There are several books I need. Can I have the books scanned and sent to me?**

The Libraries cannot digitize the books for your use, but we can seek to purchase the needed books in electronic format so you can have access to them while abroad. Alternatively, we could consider purchasing second copies for your extended use.

Format: Image

v. **I want to use a copyrighted image for an article I'm writing. What do I need to do?**

You or your publisher will need to either obtain permission from or pay the copyright holder in order to include the image in your article. The Libraries can assist you in this process. You might also look at alternative images in the public domain. For assistance, contact your [subject liaison](#).

vi. **Can I make high resolution scans of copyrighted images and use them in class?**

Yes – as long as their use is restricted to the class. The Libraries offer internal access via ARTStor for high-quality images restricted to the Haverford community.

vii. **Can I use copyrighted images in my senior thesis?**

If the image is under copyright (and chances are, it is), then it depends if your usage of the image is considered “fair use.” Typically, research publications (education) are considered fair use, and so you may use the image as long as you cite the source properly. If your use of the image is transformative (repurposed, recontextualized), then it also falls under fair use. If you do need to acquire permission to

use the image, we can help you with that. Contact your subject liaison if you have questions.

- viii. **I'm a faculty member and want to build a website with my students that will display photos taken from newspapers and magazines. Is this okay?**

Generally, this is not okay because of copyright infringement. But contact your subject liaison and we can help you determine the appropriate method for this situation.

Format: Film

- ix. **The library has a DVD and I want to have it streamed for my class. Can I do this?**

While the Libraries cannot create a streaming file from the DVD without the copyright owner's consent, the Libraries will attempt to license a reasonably-priced streaming version of the film for your class use.

- x. **I'd like to stream through my Moodle site a clip from a motion picture held on DVD by the library. Is this permissible?**

Yes. While circumvention of technological protection (i.e. digital rights management software) is generally forbidden by copyright law, some exceptions have been granted. Among these is the ability to create short portions of films from DVD for educational use.

- xi. **I have a VHS tape and I want it transferred to DVD so I can show it in class. Can I do this?**

As in the case above, the Libraries are not permitted to convert in total copyrighted material from one format to another, but we will seek to purchase a reasonably-priced DVD version of the VHS film. If such a copy is unavailable on the market, we will explore streaming options and video archives, such as Internet Archive. If these strategies fail, we will contact the copyright holder to seek permission to convert the VHS tape to DVD.

- xii. **Can I screen a film for a film club or student organization?**

The Libraries attempts to buy public performance rights for most of the videos it acquires. If we do not have the public performance rights for the film you want to show, we will help to acquire them.

- xiii. **If one of my students is making a documentary for a class project, can she use copyrighted music or video in it?**

Copyrighted materials may be freely incorporated into class assignments. If the resulting work is to be shared beyond the classroom, however, and especially if it is intended for public distribution via the Internet, one must be mindful of whether the works used to produce the new scholarship infringe the rights of the copyright holders.

xiv. I'm a faculty member and I assign my students to create a montage for class to post to the web. Am I in violation of copyright?

Technically, mashups and other video montages that use snippets of copyrighted movies, music videos, or other such works, without the permission of the copyright owner(s), could be in violation of copyright law. When the purpose of the montage is educational, however, a fair use argument can be made, particularly given the transformational nature of the finished work. Projects with a limited audience to the Haverford community would likely fall within fair use. Given the complexity of these uses, consult with your subject liaison on specific assignments and projects.

xv. I plan on showing a number of films in my course this semester. Can I send out a campus-wide invitation or a faculty-only invitation to invite people to view the films along with my class if they have interest?

The library must secure public performance rights if anyone not in the class attends the screenings. Sending out invitations to extended audiences (even if it is just the faculty) means that the library must purchase public performance rights for *each* film you intend to show. Feel free to get in touch with your library liaison to find out more information on how to do this.

Format: Music

xvi. Is it okay for me to play copyrighted works of music in class or at a public performance?

If the music recording you want to play is for educational, scholarly purposes, then it is permissible to do so--either in private or public--without permission or licensing. If the music you want to play is for public entertainment, then you must get permission.

Some examples (from "[Use of Copyrighted Music on College and University Campuses](#)" published by the American Council on Education, September 2013):

- Face-to-face teaching activities of a nonprofit institution in a classroom or similar place devoted to instruction;
- Performances of works of a religious nature as a part of religious services or assemblies;
- Performance of works of music without any commercial purpose, or compensation to perform-ers or organizers, if there is no direct or indirect admission charge or the net proceeds are used exclusively for educational, religious, or charitable purposes unless the copyright owner formally objects.

Format: Data

- xvii. **The journal to which I submitted a manuscript is requiring submission of the data I used to run the statistical analysis in my paper. These data will be publicly available. Is it an infringement of copyright if I provide the data?**

Data are generally not copyrightable as they are facts. However, a publisher that takes data and packages it for use is likely entitled to copyright protection for its effort. If you or your institution/library paid to acquire the data you are using, it is almost assuredly protected by copyright, and its redistribution would be an infringement. On the other hand, if you collected the data yourself through a survey or acquired it via a government agency or another means that makes explicit that the data are free for reuse, your submission of them to the journal is likely acceptable. The journal's editor should be able to provide guidance to you as well.

5. Appendices

a. U.S. Copyright Law

<http://www.copyright.gov/title17/>

b. Haverford IITS – Acceptable Use: Copyright Supplement

http://iits.haverford.edu/wp-content/blogs.dir/1/downloads/2012/05/2004-08-23-policy_supplement-copyright_infringement_acceptable_use.pdf

c. Haverford's Intellectual Property policy

https://www.haverford.edu/system/files/Intellectual_Property_Policy.pdf

d. Other copyright resources

- i. Peter Hirtle's public domain chart

<https://copyright.cornell.edu/resources/publicdomain.cfm>

- ii. Fair Use Checklist

<https://copyright.columbia.edu/basics/fair-use/fair-use-checklist.html>

- iii. Code of best practices in Fair Use for the Visual Arts

<http://www.collegeart.org/fair-use/>

- iv. Duke University School of Law "Tales from the Public Domain: Bound by Law?" comic book

<http://web.law.duke.edu/cspd/comics/>