

Copyright Basics

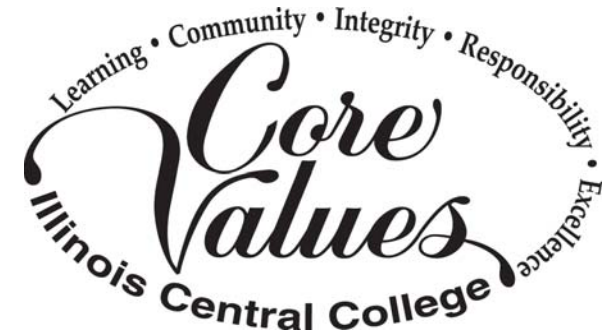


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Copyright Team

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For more information, visit the
Instructional Innovation website:
www.icc.edu/innovation/copyrightservices.asp
-- or --
Markie Castle with your copyright questions:
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The faculty and staff at Illinois Central College
demonstrate our Core Values by:

Living with **Integrity**



Accepting and teaching **Responsibility**



Contributing to the benefit of the **Community**



Encouraging life-long **Learning**



Expecting no less than **Excellence**

Further Resources

- **United States Copyright Office**
www.copyright.gov
- **Ball State University – Copyright and IP Office**
www.bsu.edu/library/collections/copyright
- **UT System – Crash Course in Copyright**
www.utsystem.edu/ogc/intellectualproperty/cprtindx.htm
- **Cornell University – Copyright Information Center**
www.copyright.cornell.edu
- **North Carolina State University – Teach Act Toolkit**
www.lib.ncsu.edu/dspc/legislative/teachkit
- **Stanford University – Copyright and Fair Use**
www.fairuse.stanford.edu
- **Copyright Clearance Center**
www.copyright.com

Print resources
are available
through the library.



It would appear that we educators are faced with a dilemma. If someone owns nearly everything, and it is illegal to use what others have created without compensation or permission, how do we function economically in the classroom? How are we to incorporate relevant materials into our every-day instruction? How do we enable our students to see and hear the images and sounds we deem essential for understanding?

The Library of Congress defines copyright as “a form of protection provided by the laws of the United States (title 17, U.S. Code) to the authors of ‘original works of authorship,’ including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works.” (Library of Congress, 1976).

Copyright and the Law

1976 Copyright Act

Copyright protection is described in the 1976 Copyright Act. The work created by an author immediately becomes the property of the author and therefore use of that work requires the permission of the author. The term "author" does not limit the "work" to written works. Broad categories for copyrightable works include literary, musical (including lyrics), dramatic (with any accompanying music), pantomime, choreography, pictures, graphics, sculpture, motion pictures, audiovisual, sound, and architecture.

The work is copyrightable as long as it is:

1. an original work
2. fixed in a tangible medium

Digital Millennium Act

The Digital Millennium Copyright Act was signed into law on October 28, 1998. In general terms, this Act describes the penalties for creating unlawful copies of software, limits liability of non-profit educational institutions when they act as an Internet service provider for faculty and students, generally aims at striking a

balance between the needs of distance education faculty, students and copyright owners, and impacts other areas of the digital material production and dissemination industry, such as ISPs.

Fair Use Doctrine

The Fair Use Doctrine allows for limited use of copyrighted work for educational purposes. See the "Fair Use" section on page 6 for more information.

TEACH Act

The Technology, Education, and Copyright Harmonization Act (TEACH) was signed into law on November 2, 2002.

The TEACH Act provides for limited use of copyrighted works by instructors and students at accredited non-profit educational institutions. See "The TEACH Act" section on page 7 for more information.

- I found a terrific instructional animation on a website. There is a more complex version for sale, but I figured out how to get this animation off the site. Can I use it?

The second section of the TEACH Act says: "(2) except with respect to a work produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks". This section of the law is basically saying to avoid using materials that are commercially available (specifically, when the purpose of the work is for instruction on digital networks). According to this interpretation, it would not be a good idea to take this animation off of the site and use it on your own. Your options would be to buy the version for sale or create your own custom animation from scratch.

- Does copyright law limit how long I can have materials on reserve?

If the material is a reproduction of the original, i.e., a photocopy or print-out, it can only continue on reserve for one semester before it needs to be removed or you need to get permission from the holder of the copyright or the Copyright Clearance Center to comply with copyright laws.

- Does this copyright law also apply to my educational packets?

Yes. The information you include in your educational packets must be in compliance with copyright laws. The photocopies of articles, photos, charts, etc. can be used in a packet for one semester. After the first semester, permission needs to be obtained.

- I have been using the same photocopy in my packet, semester after semester, for the past five years. Is this okay?

In order to use a photocopy semester after semester, permission needs to be given. This can be done by contacting the copyright owner, usually the author or publisher.

- Is there someone who can assist me with obtaining permission from the copyright holder?

Yes, Markie Castle, ICC's copyright facilitator, can assist faculty, staff and students with obtaining permission, as well as answering questions the you may have concerning copyright issues. She can be contacted at mcastle@icc.edu.

■ **I want to show a video of a full feature film to my class. Can I rent this video? Can I make a copy of it to show semester after semester?**

Fair Use will allow you to rent the video, with a few provisions. The video must relate to your current curriculum. Although most videos are labeled, "For Home Use Only", guidelines consider it "fair use" in a face-to-face classroom. You cannot show the video for entertainment purposes or charge admission. Also, you cannot make a copy of the video. This is clearly an infringement of the copyright.

■ **Can I videotape a program from a commercial network at home or ask college staff to tape it so I can use it in my lessons?**

Yes. Fair use allows a teacher to tape a program from a commercial or non-commercial network (e.g., PBS) for use in class. The tape may be shown once and then a second time for reinforcement. These displays must fall within the first ten school days following the taping. The tape may then be kept for up to 45 days for evaluation, at which point one must either purchase the program or ask for and receive permission to keep and use the tape.

■ **Can I ask college personnel to copy a videotape the college already owns to the DVD format, then destroy the original tape so that only one copy remains?**

No. Copyright law gives the copyright holder the exclusive right to make and distribute copies. A DVD copy would have to be purchased, or permission would have to be acquired from the copyright holder or their distributor, to make the copy.

■ **I show a video in my classroom and I want to put the video in my online course for those students. Can I do that?**

The TEACH Act has modified Section 110(2) to allow for performance and display of nearly all works in the distance learning environment; there are still some limitations. For distance learning situations, think "clips and snips" which represent "reasonable and limited portions" for audiovisual work and dramatic, musical works.

The technical abilities to show video in an online course still have to be considered. It is necessary that the video is hosted on a streaming server in order for the viewer to watch the video. Most course management systems are not hosted on a streaming server; when video is uploaded directly to course management software, such as Blackboard, the entire video file has to be downloaded across the viewer's connection before the video will begin to play. Even a very short video will cause an extremely long delay before it plays.

Displaying a copyright notice on a work is not required to secure legal protection under law. Therefore, it is not safe to assume that if a work does not display a copyright note or symbol it is not copyrighted. However, any work published before 1923 is in public domain and can be freely used.

If the use of a work does not clearly fall under the exemptions of the Fair Use Doctrine or the TEACH Act, permission must be secured to use the work from the author or copyright owner.



Exemptions from the Law

Not every instance of copying is a violation of the law. There are avenues available for legitimate educational use of copyrighted materials.

Copyrights Expire

A copyright is for a finite period. When a copyright expires, the work is said to be in the public domain. Presently, all works published before 1923 are in this public domain and may be used freely. For example, a history class may be enhanced by the display of early American political cartoons created before 1923; a computer programming class, however, would find less value in using anything of this vintage. Anything published after 1923 is protected by the copyright laws. Expiration dates of these materials may vary.

Concept of Fair Use

After the 1976 Copyright Act was passed, the idea of "Fair Use" was read into the Congressional Record. Congress recognized that there were situations in which one should be able to copy a protected work. Teaching and research are such instances. See the section titled "Fair Use Doctrine" on page 6.

TEACH Act

The Technology, Education, and Copyright Harmonization Act, also known as the TEACH Act, passed in the fall of 2002, recognized the dissonance between the DMCA and the need for educators to take advantage of new technologies to reach students in situations other than face-to-face teaching. The act allows educators to put some materials online, with adequate protection, and to transmit materials in two-way, interactive video/audio classes, with certain restrictions. See the section titled "TEACH Act" on page 7 for more information.

- **Can I scan the paper handouts I would normally use in the traditional classroom and distribute them in my course website?**

The use of scanned handouts would fall under the provisions of the TEACH Act. Scanned materials made available in electronic format and on the Web must be secured in a password-protected environment, the quantity of the material used must fall within the Fair Use guidelines, the materials must be fully cited for source and authorship, and student access to the materials must be limited to the term of the course.

- **Can my online course include a link to copyrighted material available on another website?**

In general, linking to authorized sites is not a copyright violation. In fact, linking to a website is often an effective way to avoid reproducing material that could be a copyright concern. Issues may arise about the legitimacy of the site, but is not a copyright concern.

- **I would like to use the workbook that accompanies my textbook, but I only need two chapters from the workbook. I don't want to make the students pay \$25 for the workbook, so I would like to copy those pages. Would this fall under the fair use guidelines?**

No, this would not fall under fair use. According to the copyright guidelines, "There shall be no copying of or from works intended to be 'consumable' in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material." Therefore, the copying of any workbook would be an infringement, unless permission is obtained from the publisher.

- **Can I download and use an image from the Web in my instructional materials?**

As long as the use of the image falls within the guidelines of Fair Use, the image was obtained in a legal fashion, and the image is properly cited, it can be used in instructional materials. An image citation should be displayed near the image and include the site from which the image was downloaded as well as other pertinent ownership information.

Copyright Basics Q&A

- **I didn't realize it at the time, but I was breaking copyright laws. Can I still be sued or fined?**

If you can *prove* that you believed that you were fairly using the materials within the guidelines provided, then you are most likely protected in the prior accidental misuse.

- **I found a great article in a trade periodical that I wish to copy and use for my next class session. It helps to illustrate the point of the lesson for the day. I don't have time to get permission to use the article. Can I copy it and write for permission later?**

Under Fair Use, you may make one copy to distribute to each student in your class. The key in this situation is the spontaneity of your action. If you waited to get permission, the opportunity to incorporate this useful item into your instruction would be gone. Copyright guidelines recognize this circumstance and allow for duplication in this instance. If you wanted to distribute the article to your classes semester after semester, then you need to ask permission to do so.

- **If I can't repeatedly make photocopies for all of my students, can I just make sure enough copies of the materials are on reserve for my students to read?**

If the materials are books that you or the school own, you can reserve as many copies as the library will support through their policies. If the materials are photo copies of articles or printouts of websites whose contents you did not personally create, you are limited to one copy on reserve.

- **I am interested in obtaining permission to use copyrighted materials for my class, however there is a charge and I have no budget for this. Is there a department or office on campus that has funds for this type of request?**

At this time, there is neither a specific office nor a line item in budgets for "duplication of copyrighted materials." However, such an item could fall under "materials and supplies." An expenditure for such an item would be a matter between you and your associate dean to use funds to acquire permission to use the materials.

Asking for Permission

If you want to use copies of a protected work, you can always just ask for permission. The copyright holder or his/her licensed distributor can give such dispensations.

Be prepared to write a letter that accurately details:

- the work you want to copy,
- the specific part(s) you want to copy,
- how and where you will use the material, and
- how long you intend to use the copied portion.

Copyright Clearance

The Copyright Clearance Center (CCC) is a central agency from which educators can apply to get permission to use portions of protected works. As of this writing, the CCC deals with printed works, including images, but not with other forms of media. Fees are charged for permissions granted.

Image Banks

There are image banks that sell the rights to use other forms of media, such as 35mm slides or digital images. These firms operate on a fee basis. Such companies acquire images from sources such as freelance photographers, then sell the rights to use these images to others.

Royalty Free

There are also royalty free websites that permit you to download images and materials. Many of these websites are developed to promote new artists, authors, etc. You should be *absolutely sure* that these sites are legitimate and that their images are truly royalty free. Remember, when in doubt, do not use the material.

Fair Use Doctrine

The Fair Use Doctrine provides for limited use of copyrighted materials for educational and research purposes without permission from the owners. It is not a blanket exemption. Instead, each proposed use must be analyzed under the following four factors:

■ PURPOSE

For what reason is the material being used? Non-profit, educational use is favored for fair use, while commercial use is disfavored.

■ NATURE

What type of work is it? Fictional work is more likely to require permission than factual work.

■ AMOUNT

How much of the work is being used? Guidelines that have been set by various organizations are not law, but these guidelines are usually followed. A general guideline for brevity is no more than 10% of the work or 1,000 words, whichever is less. With recorded works, the guideline is no more than 10% or 30 seconds of the work.

■ EFFECT

What is the effect on the market or potential market for a copyrighted work? Copying large portions of a work in order for the student to not have to purchase the book would have an effect on the market for the work. Under the fair use guidelines, workbooks (without permission from the publisher) are never allowed to be copied due to this factor.

These four factors can be nebulous, and are not law, but should enter into the decision whether or not to copy materials and would weigh heavily in a court of law, should it come to that.

It is generally considered fair use to make a single copy of a printed material for personal teaching or research uses. If multiple copies of certain materials are needed to distribute to students in classes or to include in coursepacks for sale, copyright permission is preferred.

TEACH Act

The Technology, Education, and Copyright Harmonization Act, signed into law on November 2, 2002, expands the scope of educators' rights to perform and display literary, musical, and other works in the distance learning environment. It provides new permissions to instructors if they work for an accredited institution and the institution is in compliance with Teach Act responsibilities.

Permissions

The TEACH Act allows for:

- display/performance of nearly all types of work,
- no restrictions on recipient's location (traditional or digital classroom),
- student access/retention for length of class session, and
- copying/storing for digital transmission of material to students (including analog works not otherwise available to the faculty member).

Responsibilities

The TEACH Act gives greater freedom, but also comes with greater responsibility for both the faculty member and the institution.

The Institution should:

- Institute policies regarding copyright (a set of standards for employees/students should exist),
- limit the access/transmission of educational content to enrolled students, and
- provide notice that materials may be protected by copyright.

Individual faculty members are obligated to:

- supervise the use of copyrighted materials,
- provide notice to students when materials may be subject to copyright protection, and
- ensure that the materials used are an integral part of the course curriculum (not merely entertainment or unrelated background information).

The TEACH act does not provide all of the permissions that the Copyright Act provides for face-to-face instruction. For uses that fall outside the scope of the TEACH Act, the user should seek permission or evaluate the use under the fair use exemption of the copyright law.