

# COPYRIGHT GUIDE FOR STUDENTS

The Copyright Resources Center  
The Ohio State University Libraries

libcopyright@osu.edu  
go.osu.edu/copyright  
614-688-5849

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# COPYRIGHT BASICS

As a student, you will work with copyrighted materials throughout your entire academic career. The books you use, the papers you write, the movies you watch, the quick sketches you draw in the margins of your notes, and the dances you perform are just some of the examples of possible copyright protectable works that you may come in contact with, either as a creator or as a user. This guide provides an introduction to copyright law, including the process for protecting your own works and determining how to effectively use the works of others while complying with copyright.

## ❖ What is Copyright?

*“The Congress shall have the power ... to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”*

U.S. Const. art. I, § 8.

Copyright is a form of intellectual property recognized in the U.S. Constitution that exists to promote the progress of science and the useful arts by granting creators a limited monopoly over their works. This creates an incentive to generate new works, as a limited monopoly provides creators with the opportunity to profit from their efforts. Copyright applies to **original** works of authorship that are **fixed** in any **tangible** medium of expression.

Copyright is **automatic**. As soon as an original work of authorship is fixed into a tangible medium of expression (e.g. an essay is written, a photograph is taken, a video is recorded, etc.) the creator of the work has a copyright in that work. It is not necessary to include a copyright notice or register the work with the United States Copyright Office to obtain copyright protection.

## ❖ What Types of Work Can Be Protected By Copyright?

Copyright extends to a large variety of works, so long as those works are original and fixed into tangible medium of expressions. According to U.S. Copyright law, works that can be copyrighted include:

- literary works;
- musical works, and accompanying words;
- dramatic works, and accompanying music;
- pantomimes and choreographic works;
- pictorial, graphical, and sculptural works;
- motion pictures and other audiovisual works;

- sound recordings; and
- architectural works.

As you can see, copyright protection applies to a wide variety of works. There are, however, some items that **cannot** be protected by copyright. Copyright does not protect:

- facts;
- slogans, names, and short phrases;
- ideas, procedures, processes, systems, methods of operations, concepts, principles, and discoveries;<sup>1</sup>
- works produced by the U.S. Government produced by government employees; or
- works that fall within the public domain.

The public domain consists of works that are available for anyone to use without having to first ask permission from the copyright owner. It includes works whose copyright protection has expired, creative works that never had copyright protection (such as U.S. government produced works), and works that have voluntarily been placed into the public domain by the copyright owner.

### Resources:

- ❖ [The Copyright Resources Center: Copyright Basics](#)
- ❖ [OSU's Policy on Patents and Copyright](#)
- ❖ [The United States Copyright Office](#)
- ❖ [Copyright Crash Course](#)
- ❖ [Columbia University Copyright Advisory Office](#)
- ❖ [Copyright Information and Resources at University of Minnesota](#)

### ❖ How Long Does Copyright Last?

Copyright applies for a limited time. Once the copyright term expires for a work, it falls into the public domain and the copyright owner no longer has the ability to exclude others from using the work.

Copyright law has changed over time, so the length of copyright protection for a particular work depends on a number of factors, including when the work was created or published, who created it, and what legal formalities were followed. In general, a work created today will have copyright protection for the **life of the author plus an additional 70 years**. The charts below provide more information on the copyright duration for many works already created or published.

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<sup>1</sup> Material that falls under this category may be protected by patent or trademark law.

<b>Created on or after 1/1/1978</b>	<b>Duration</b>
<b>One author</b>	Life of the author + 70 years
<b>Joint authorship</b>	Life of the last surviving author + 70 years
<b>Work-made-for-hire; anonymous works; pseudonymous works</b>	95 years from publication or 120 years from fixation, whichever is shorter.  If an anonymous author is later revealed, life of the author + 70 years.

<b>Published before 1/1/1978</b>	<b>Duration</b>
Works published <b>before 1/1/1923</b>	In the public domain
Works published <b>on or after 1/1/1923 and before 1/1/1964</b> + proper renewal (including registration) <b>filed</b>	95 years from publication
Works published <b>on or after 1/1/1923 and before 1/1/1964</b> + proper renewal (including registration) <b>NOT filed</b>	In the public domain
Works published <b>on or after 1/1/1964 and before 1/1/1978</b>	95 years from publication

<b>Created but not published before 1/1/1978</b>	<b>Duration</b>
All works	In no case does copyright expire before 12/31/2002.
<b>Not</b> published on or before <b>1/1/1978</b> and <b>on or after 12/31/2002.</b>	Use same rules for works created on or after 1/1/1978 (from chart 1 above), but in no case will copyright expire before <b>12/31/2002.</b>
Meanwhile <b>published</b> on or after <b>1/1/1978</b> and <b>on or before 12/31/2002.</b>	Use same rules for works created on or after 1/1/1978 (from chart 1 above), but in no case will copyright expire before <b>12/31/2047.</b>

### Resources:

- ❖ [The Copyright Resources Center: Copyright Basics](#)
- ❖ [Copyright Term and the Public Domain in the United States](#)
- ❖ [Columbia University Copyright Office: Public Domain Resources](#)

# YOUR RIGHTS AS A CREATOR

In general, the author(s) of a work own the copyright to that work. It is important to recognize who the owner of a copyrighted work is because the owner has the ability to control how the work is used in a number of different ways. Under OSU's copyright policy, students hold the copyright in their own creative and scholarly works, including course assignments, unless stipulated otherwise by individual departments.

## ❖ What Rights Does a Copyright Owner Have?

As a copyright owner, you receive a bundle of exclusive rights. You may:

- **reproduce** your work;
- prepare **derivative works**;
- **distribute** your work;
- **publicly display** your work;
- **publicly perform** your work; and
- in the case of sound recordings, **publicly perform** the work by means of **digital audio transmission**.

Because these are “exclusive” rights, anybody wishing to use your copyrighted work in any of the ways mentioned above must first receive your permission. You have the right to give, sell, license, or transfer any or all of these rights to another person.

## ❖ How Do I License My Work?

When you license your work, you are granting another party permission to exercise one or more of your exclusive rights under a set of agreed upon conditions. You can decide the conditions under which you will license the work, including whether the license will be exclusive or non-exclusive, the amount of payment you will receive for the use, the number of times the work can be used, the manner or context in which the work can be used, the amount of the work that can be used, and the citation that is required. To grant an exclusive license, or to transfer your ownership of the copyright to someone else, you must have a signed, written agreement.

You may also license your work through an open license such as Creative Commons. Under this scenario, you retain your copyright while at the same time allowing any third party to use your work under the conditions you have specified. Creative Commons licenses allow others to use your works without first having to negotiate an individual license agreement with you.

[Creative Commons](#) provides a range of licensing options, which may be as simple as requiring others to credit you whenever they use your work (Attribution), only allowing use of your work if it remains unchanged (NoDerivs), or allowing others to use your work

so long as they license their new work under the same conditions (ShareAlike). License options include:

- Attribution,
- Attribution-NoDerivs.,
- Attribution-NonCommercial-ShareAlike,
- Attribution-ShareAlike,
- Attribution-NonCommerical,
- Attribution-NonCommercial-NoDerivs,
- And a Public Domain mark, releasing all rights in the work.

## ❖ The Registration Process

Copyright is automatic and does not require registration or a copyright notice. To file a suit in federal court for copyright infringement, however, a work must be registered with the U.S. Copyright Office. Registration requires the rights holder to fill out forms, available through the U.S. Copyright Office's website ([www.copyright.gov](http://www.copyright.gov)), and submit a registration fee.

### Resources:

- ❖ [The Copyright Resources Center: Author's Rights](#)
- ❖ [OSU's Policy on Patents and Copyright](#)
- ❖ [The United States Copyright Office: Exclusive Rights in Copyrighted Works](#)
- ❖ [The United States Copyright Office: How to Register a Work](#)
- ❖ [Columbia Copyright Office: Your Copyrights](#)
- ❖ [Creative Commons](#)

## USING COPYRIGHTED WORKS

Whenever you intend to use a third party's copyright protected work in a way covered by the author's bundle of rights, you need to secure permission from the copyright owner. Depending on the status of the work and the way in which you are using it, permission may be automatic, permission may be subject to a number of conditions, or your use of the work may otherwise be permitted through a statutory exception in the law.

You may face a claim of copyright infringement if your use of a work is not protected under the law and you have not secured permission from the copyright owner.

### ❖ The Difference Between Copyright Infringement and Plagiarism

Plagiarism is using another person's words or ideas without acknowledgement. It is a breach of an ethical code that can result in charges of misconduct. In comparison, 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.

A student may avoid claims of plagiarism by using quotations when directly quoting another source, citing the source used, and, when possible, translating works into his or her own words. However, these tactics alone do not protect a student against claims of copyright infringement. To use a copyright protected work, the student must have permission to do so, either under the law or through the copyright owner.

### ❖ Using Works Inside the Classroom

As we discussed earlier, a copyright owner receives a number of exclusive rights in their works. As a general rule, whenever a student wishes to use a copyrighted work in one of these exclusive ways, they should first seek permission from the copyright owner. Copyright law, however, provides several important exceptions to this general rule, which may allow for use without permission depending on how the work is to be used. In addition to the exceptions discussed below, fair use (discussed in detail later on in this guide) is an important defense for the use of works without permission. But don't forget that statutory exceptions do not protect against claims of plagiarism—proper citation is still necessary.

**Exception 1: The face-to-face teaching exception.** When students are presenting their work within a classroom or preparing a class presentation, their use may be protected by the face-to-face teaching exception provided in [§ 110\(1\)](#) of the Copyright Act. Section 110(1) allows students to **perform** or **display** a lawfully made copy of a work in the course of face-to-face teaching activities when they are using the work for instructional purposes

at a non-profit educational institution. The face-to-face teaching exception may cover such uses as: showing videos, displaying images, reading poems aloud, or performing songs.

An important point to remember is that the face-to-face exception only covers the performance or display of a work. If a student must copy the work (i.e. reproduce the work) permission may be necessary.

**Exception 2: The digital transmission exception.** The protections for performing or displaying copyrighted works in face-to-face teaching may also extend to digital transmission of such works through online courses. This exception is provided in [§ 110\(2\)](#) of the Copyright Act. There are several restrictions to the exception, however. In order to perform or display a copyright protected work through a digital transmission and qualify for the exception:

- the work must not be one that is made and marketed mainly for distance learning;
- the work must be lawfully made and acquired;
- transmission must be made by or under actual supervision of instructor;
- performance/display must be made in the course of teaching activities of a nonprofit educational institution;
- the performance must be limited to the amount comparable to what is typically displayed in live classroom session;
- the performance/display must be directly related and of material assistance to teaching content; and
- the transmission is for students officially enrolled in the class and technology is used to limit the transmission to only those students, as much as possible.

## ❖ Using Works Outside the Classroom

When copyrighted material is used outside the classroom—such as uploading content to personal blogs, submitting works to digital repositories, live music performance, student fundraising, or movie nights for a student group’s social gathering—different issues may arise.

Because the work is now being used outside of the classroom and outside of the teaching environment, the face-to-face teaching exceptions and digital transmission teaching exceptions no longer apply. Copyright law does, however, provide an additional exception for the performance of nondramatic literary or musical works.

### **Exception: Non-profit public performances without an admission charge**

Section [110\(4\)](#) of the Copyright Act allows a public performance exception for **nondramatic** literary or musical works, outside of transmissions to the public. While “nondramatic literary or musical work” is not defined in the Copyright Act, the U.S. Copyright Office generally describes *dramatic* works as plays and radio or television scripts that are intended to be performed, and usually include spoken text, plot, and directions for



action. Generally, if a live performance involves using the copyrighted work to tell a story, or you are using the work as part of a story or plot, your use is dramatic.

Nondramatic works may be performed publicly, without permission from the copyright owner, so long as:

- the performance is given directly by a live performer or performers and not transmitted to the public by broadcast or other means;
- the performance does not have any direct or indirect commercial advantage;
- the performers, promoters, and organizers do not receive any compensation for their involvement;
- there is either no direct or indirect admission charge.

If admission is charged, performance of the work may still be permitted provided all the other requirements are met and any proceeds are used exclusively for educational, religious, or charitable purposes.

### ❖ How Do I Seek Permission to Use a Work?

If use of a work is not covered by a statutory exception mentioned above, is not available for use through an open license, and is not otherwise available (such as works in the public domain), express permission for that use needs to be granted by the copyright owner. In such cases, students should take a 3-step approach:



The first step in this process involves identifying the copyright owner. Keep in mind that the original author of the work may not be the copyright owner. The author may have transferred their rights in the works (e.g. to a publisher), meaning that the new owners now possess some or all of the exclusive rights the author had at the time of creation. Once you have identified the copyright owner, contact the copyright owner and request permission to use the work. If the copyright owner is willing to allow the work to be used, the last step in the process is negotiating the terms of use. Can you use the full work? How should the owner be attributed? Can you make changes to the work? Do you need to pay to use the work? Try to think of all of the ways you may want to make use of the material or the entire project that you are creating. Strive for the broadest set of rights. Make sure all terms are clear before using the work. It is best to have a written record of permissions; if you received oral permission to use a work, follow up with an email or hardcopy letter

confirming the terms you agreed upon.<sup>2</sup> If you need additional assistance with requesting permission, contact the [Copyright Resources Center](#).

## ❖ Where Can I Find Public Domain Works to Use?

Works falling within the public domain are not protected by copyright and can therefore be used by anyone without restriction. There are a number of resources available online that can be used to identify public domain works.

- [Columbia University's Copyright Office: Public Domain Resources](#)
- [Stanford University Libraries: Welcome to the Public Domain](#)
- [Internet Archive](#)
- [Project Gutenberg](#)
- [Copyright Librarian: Free and Legal Stuff You Can USE!](#)

## ❖ How Do I Use a Work Under a Creative Commons License?

Works available under a Creative Commons license will have varying use conditions, depending on the terms of the license chosen. The terms of the license can be determined through the visual mark affixed to the protected work.



**Attribution CC BY**



**Attribution-NonCommercial CC BY-NC**



**Attribution-NonCommercial CC BY-NC**



**Attribution-ShareAlike CC BY-SA**



**Attribution-NonCommercial-ShareAlike CC BY-NC-SA**



**Attribution-NonCommercial-NoDerivs CC BY-NC-ND**



**Public Domain**

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<sup>2</sup> If both parties have agreed to an exclusive license (meaning the copyright owner is allowing you, and only you, to use the work), the agreement *must* be in writing.

To properly attribute, the following information should be included:

- Title of the material,
- Creator's name,
- Source of the image (typically a URL),
- Any copyright information included with the work, and
- Information indicating the type of Creative Commons license the work is being used under (including a link back to the license).

### Example:



“[Ohio State University Library](#)” by [VasenskaPhotography](#) is licensed under [CC BY 2.0](#)

### Resources:

- ❖ [The Copyright Genie](#)
- ❖ [OSU Center for the Study and Teaching of Writing: Defining and Avoiding Plagiarism](#)
- ❖ [The Copyright Resources Center: Using Materials](#)
- ❖ [The Copyright Resources Center: Online Images Resources](#)
- ❖ [Attributing Creative Commons Materials](#)
- ❖ [Creative Commons: Best Practices for Attribution](#)

## STUDENT PUBLICATION

Under OSU's Copyright Policy, students own the copyright in their scholarly works, including theses, dissertations, and research papers. As the author of these original works, a student may choose to seek more exposure for her works by publishing her findings through a research journal or other established publisher. This usually involves licensing, transferring or assigning the author's exclusive rights to the publisher through a publishing agreement.

### ❖ The Publishing Agreement

Before signing a publishing agreement, you should be aware of what rights you will retain and what rights you will transfer away under the terms of the agreement. **Read** the terms of the agreement, **ask** for the rights you need and want, and **understand** what you are signing. Talk to your publisher about granting only those rights that are needed for publication.

OSU governance endorses the [CIC Statement on Publishing Agreements and the Addendum to Publication Agreements for CIC Authors](#). Students may use this addendum to retain non-exclusive rights to use their article for academic and professional activities; to make a published article available over the internet after a six-month embargo, and for others at the student's institution to use the article in conjunction with academic and professional activities.

Also keep in mind that any previously permitted use of third party material within your own work may no longer be permissible when you seek to publish your work since it is being disseminated to a wider audience. In cases where prior permission does not extend to the new circumstances, new permission is required. To ease this process, try to anticipate possible future uses of third party works and secure broad permissions from the start.

### Resources:

- ❖ [The Copyright Resources Center: Publishing](#)
- ❖ [WUSM Scholarly Communications Initiative: What to Look for in Publisher Copyright Agreement Form?](#)

## FAIR USE

If your use of a copyright protected work does not fall within one of the specific statutory exceptions provided by the law, and you have not otherwise obtained permission from the copyright owner to use the work, you may face a claim of infringement. One important defense to any potential claim for infringement, however, is the defense of fair use. Fair use serves as a limitation on the exclusive rights of a copyright owner—an important check on the limited monopoly granted though copyright law. In cases where fair use applies, a person may use another’s copyright protected work without seeking the copyright owner’s permission.

### ❖ What is “fair use”?

Fair use, as outlined in [Section 107](#) of the Copyright Act, recognizes that certain uses of protected works, such as criticism, commentary, news reporting, teaching, scholarship, or research, can, under certain circumstances, be extremely beneficial for society. Subsequently, a use that qualifies as “fair use” is allowed under the law, even though such a use would normally satisfy all of the elements of a copyright infringement claim.

### ❖ How Do I Know If My Intended Purpose is “fair”?

Unlike some of the more narrow exceptions explained earlier, fair use is a legal defense that may protect a wide range of uses in many different situations. To determine if a particular use of a work might qualify as fair use, the following factors must be considered:

1. the **purpose and character** of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. the **nature** of the copyrighted work;
3. the **amount and substantiality** of the portion used in relation to the copyrighted work as a whole; and
4. the **effect** of the use upon the **potential market** for, or value of, the copyrighted work.

These factors provide the framework for a fair use analysis, but no one factor is determinative—not all educational use is fair use and not all commercial use precludes fair use. Each case must be considered individually. There are no easy rules on just how much of a work you can use before it is no longer considered “fair”, but through the years as courts have developed the doctrine of fair use, certain activities have tended to fall on the side of “fair”. These activities include quoting excerpts of a work for criticism, using limited parts of a work to create a parody of the original work, or reproducing short amounts of a work for scholarly purposes.

In general, students should strive to use only the amount of a work needed to accomplish their purpose, and use the material in a way that transforms, or adds something new, to the original work. Access to the work should be restricted to appropriate and necessary groups. There are a number of resources, located below, that can aid you in considering whether your work may be found to be a fair use.

### Resources:

- ❖ [The Copyright Resources Center: Fair Use](#)
- ❖ [OSU Health Sciences Library fair use Checklist](#)
- ❖ [Columbia University Libraries Fair Use Checklist](#)
- ❖ [U.S. Copyright Office: Fair Use](#)
- ❖ [ALA OITP Fair Use Evaluator](#)
- ❖ [Thinking Through Fair Use](#)
- ❖ [Code of Best Practices in Fair Use for Academic and Research Libraries](#)
- ❖ [Center For Social Media's List of Codes of Best Practices In Fair Use](#)