

OER FAIR USE, COPYRIGHT, AND TEACH ACT*

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Abstract

fair use

1 Lesson: Fair Use and Copyright

1.1 Lesson Components

- Fast Fact
- Skill/Objective
- Success Indicators
- Introduction
- Activity
- Review questions
- Resources

1.2 Fast Fact

The copyright notice © is no longer required for works published after March 1989. Absence of notice does not necessarily mean the work is within the public domain.

1.3 Skills/Objectives

Learners will be able to:

1. Define copyright, fair use, the TEACH Act, and intellectual property.

Success Indicators

Determine the appropriateness of their own use learning materials for OER in terms of fair use. Creative Commons license selected for learner's OER.

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[†]<http://creativecommons.org/licenses/by/2.0/>

2 Introduction

A basic understanding of copyright, fair use, the TEACH Act, and intellectual property is necessary before using and developing OER in order to minimize the risk of violating the law. You are encouraged to visit one or more of the many online tutorials exist which address these topics.

Copyright

- Copyright and Distance Education¹
- ©Primer², University of Maryland
- Digital³ focuses specifically on issues relating to copyright in digital works and the problems encountered by educational institutions in their use of digital materials for teaching, research and service
- The Case of Dr. No⁴ is a video clip that addresses the challenges faced by faculty when distributing copyrighted material from various sources.
- The Copyright Crash Course⁵ from the University of Texas at Austin
- Copyright Term and the Public Domain in the United States⁶
- Copyright Management Center at IUPUI⁷
- VA Tech Copyright Info⁸
- Copyright Tutorial⁹

Fair Use

The fair use doctrine, as codified in §17 U.S.C. 107, sets forth four general factors to be considered when evaluating whether a proposed use of a copyrighted work is a fair use and thus, does not require permission from the copyright holder.

The four factors are:

1. What is the purpose of the proposed use?
 2. What is the nature of the copyright work to be used?
 3. How much of the copyrighted work will be used?
 4. What is the effect on the market or potential market for the copyrighted work?
- Fair Use¹⁰
 - Common Scenarios of Fair Use Issues: Posting Materials on Course Management Systems¹¹
 - Library of Congress Questions and Answers: Copyright and Fair Use¹²
 - Copyright & Fair Use at Stanford¹³
 - Rules of Thumb for Displaying and Performing Others' Works in Distance Learning¹⁴
 - A Teacher's Guide to Fair Use and Copyright¹⁵

¹http://www.copyright.iupui.edu/dist_learning.htm

²<http://www-apps.umuc.edu/primer/>

³<http://www-apps.umuc.edu/dcprimer/enter.php>

⁴http://marconi.umuc.edu/ramgen/cip/educause_dr_no/case_of_no.rm

⁵<http://www.lib.utsystem.edu/copyright>

⁶http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm

⁷<http://www.copyright.iupui.edu/>

⁸<http://scholar.lib.vt.edu/copyright/>

⁹<http://www.lib.ncsu.edu/scc/tutorial/copyuse/index.html>

¹⁰<http://www.copyright.iupui.edu/fairuse.htm>

¹¹<http://www.copyright.iupui.edu/fuscenarios.htm>

¹²<http://memory.loc.gov/learn/start/cpyrt/>

¹³<http://fairuse.stanford.edu/>

¹⁴<http://www.utsystem.edu/ogc/intellectualproperty/copyol2.htm#distance>

¹⁵<http://home.earthlink.net/~cnew/research.htm>

- Copyright and Fair Use in the Classroom, on the Internet, and the World Wide Web¹⁶
- Stanford Copyright Law and Fair Use¹⁷

TEACH Act

The TEACH Act updates copyright law for digital online education as a compromise effort to address the copyright restriction disparities between digital classroom and the traditional classroom in terms of performances and displays. TEACH Toolkit¹⁸ provides checklists and a “best practices” as well as basic information. Under the Teach Act, faculty can use copyrighted material in their online courses without seeking the author’s permission under the following circumstances:

- The college must be accredited and nonprofit.
- The college must have an internal policy on use of copyrighted material and on copyright law.
- The college must provide printed or online resources for faculty members that describe their rights and responsibilities under copyright law.
- The material must not have been originally intended for educational use.
- The material must have been lawfully acquired
- The material must be an integral part of the class session.
- Reasonable precautions must be made to restrict access to the copyrighted content to students enrolled in the course.
- Other reasonable controls must be used to prevent students from disseminating the material after viewing it.
- If a digital version of the material is readily available for use at the institution, then the instructor cannot convert an analog version to digital form for use in an online course.
- The college must inform students that the material may be protected by copyright law.

Intellectual Property

Watch the video introduction¹⁹ to Creative Commons (CC)²⁰. CC is a nonprofit organization that provides authors with free tools to manage their intellectual property. A CC license allows others to reproduce a licensed work when they give credit to the license holder. The CC website has a tool that generates licenses²¹ (in HTML format) based on chosen criteria. Educause provides good summary of 7 Things Series You Should Know About Creative Commons²²

3 Activity

Experience

1. Watch Dr. No Returns!²³ is a video clip in which an instructor would like to use the TEACH Act to provide music from various sources to a "History of Music" course through a password protected web site.
2. Use Checklist for the TEACH Act²⁴ to determine whether or not your planned use of learning materials are suitable as OER is in compliance with the TEACH Act.

¹⁶<http://www.umuc.edu/library/copy.html>

¹⁷<http://www-sul.stanford.edu/cpyright.html>

¹⁸<http://www.lib.ncsu.edu/scc/legislative/teachkit/>

¹⁹<http://search.creativecommons.org/>

²⁰<http://creativecommons.org/>

²¹<http://creativecommons.org/>

²²<http://www.educause.edu/ir/library/pdf/ELI7023.pdf>

²³http://marconi.umuc.edu/ramgen/cip/educause_dr_no_returns.rm

²⁴<http://www.copyright.iupui.edu/teachlist.htm>

3. Use one of the EduSource Canada Public Domain Wizard²⁵ to determine if the learning materials you plan to use are in the public domain.
4. Use Checklist for Fair Use²⁶ to determine whether or not your planned use of learning materials are suitable as OER in terms of fair use.

Reflect

1. Once you have joined OER Commons²⁷, make your own posting to the OER Matters Discussions²⁸ area. Click on OER Matters Intellectual Property Forum to answer the following question:

"At the core of OER use and re-use are legal issues surrounding the sharing, use, and re-use of OER as a way to sustain and grow the OER movement. How does the shift from proprietary to participatory impact OER?"

Apply

1. Choose an OER License²⁹ for learning materials you might develop and share.
2. Read about how intellectual property and fair use³⁰ impact decisions to publish scholarly works at Connexions³¹. Decide if you want to contribute³² to Connexions.

3.1 Review Questions

1. What is fair use?
2. What is the TEACH Act?
3. How do fair use and the TEACH Act apply to the use of OER in your teaching?

3.2 Resources

- The Copyright Crash Course” from the University of Texas at Austin³³
- New Copyright Law for Distance Education: The Meaning and Importance of the TEACH Act³⁴
- Balancing copyright concerns: The TEACH Act of 2001³⁵

²⁵http://www.edusource.ca/craw/PD_Wizard.html

²⁶<http://www.copyright.iupui.edu/checklist.htm>

²⁷http://www.oercommons.org/join_form

²⁸<http://www.oercommons.org/matters/oer-matters-discussions>

²⁹http://wikieducator.org/Open_Educational_Content/olcos/CHOOSE_a_license

³⁰<http://cnx.org/help/ipfaq>

³¹<http://cnx.org/>

³²<http://cnx.org/content/m14346/latest/>

³³<http://www.lib.utsystem.edu/copyright>

³⁴http://www.copyright.iupui.edu/teach_summary.htm

³⁵<http://www.educause.edu/ir/library/pdf/ERM01610.pdf>