

THE EDUCATOR'S GUIDE TO

Creativity & COPYRIGHT

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WHETHER THEY'RE WORKING IN CLASS OR AT HOME, STUDENTS ARE ACCESSING, VIEWING, CREATING, AND SHARING MEDIA AS PART OF THEIR DAY-TO-DAY ACADEMIC EXPERIENCES.

All of this is made possible by near ubiquitous access to digital devices and internet in schools and homes. While teachers are conscious of plagiarism when student products are in the form of research papers, the complicated areas of copyright, fair use, and open access creative works (such as Creative Commons or public domain) are less familiar but are just as important. Now that our students are creating and remixing audio, video, text and images to "show what they know" it is essential that they are doing all of this with a clear understanding of their own rights and the rights of other creators or owners of content.

There was a time when copyright issues were only of interest to media professionals with resources, back when very few people had the capacity to create professional quality video or audio or even printed documents. Now, anyone with a computer or a smartphone has the tools to create, edit and share professional quality media. For students, this means that copyright directly affects activities they are likely to engage in on a regular basis at school, at home, and eventually in the workforce.

While copyright is a legal concept, learning about how it applies to teachers and students is important not just because of some possible – though unlikely – legal consequences. It's about doing the right thing, establishing good habits, and ensuring that students are learning to respect the rights of other content creators. They should also understand the difference between classroom use and broader use, such as posting materials online.



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Copyright isn't just about setting limits on what students can do or use. As students engage in creative projects, copyright protections apply to their work too! And there are rich opportunities for students to draw upon and reuse the creative work of others in legal and ethical ways. Here are three examples:

- Students can reuse and remix a vast array of images, music, and videos that are specifically licensed for that purpose (sometimes with restrictions).
- They can also create with materials that are not copyrighted or whose copyright may have expired.
- For some uses, especially in the education context, students can rely on the doctrine of fair use, which permits certain reuses of copyrighted works without permission – but it's important to understand the key factors that govern whether fair use applies.

There are many guidelines in this area, but like many areas of law and ethics, there are some gray areas too. This guide is meant to provide you with a broad understanding of copyright, clear definitions of related terms, and likely applications that you can use in your daily work in your classroom with students. Copyright is not something to fear. Remember that you should feel empowered to use and create materials when you have a right to.

TOP 5 QUESTIONS

1. What's protected by copyright and what isn't?

The U.S. Copyright Office says that copyright "protects original works of authorship including literary, dramatic, musical, and artistic works, such as poetry, novels, movies, songs, computer software, and architecture."

Copyright does not protect "facts, ideas, systems, or methods of operation," although it may protect the way these things are expressed. The fact that the war in 1812 started in 1812 is not copyrighted, but an analysis of that war could be.

Anything published, recorded or filmed prior to 1923 is no longer covered by its original copyright.

2. What does someone have to do to protect a work with copyright?

Create something. Original works are protected by copyright automatically, once they are created and put in tangible form. You don't need to register them with the U.S. Copyright Office, but you can if you want a public record of your ownership of the copyright to exist. A copyright mark © is not required.

3. What is "Fair Use" and how does it protect the right to use certain copyrighted material?

In an educational setting, "Fair Use" often permits students or educators to use portions of someone else's copyrighted work without getting permission. For example, if you were to use a copyrighted image in a student project, that would be OK but if you posted it to a public website, it might not be OK. Ethics, courtesy and academic integrity and policies may further impact what you can use and your responsibility to credit your source.

4. Are there copyright-free resources that students and educators can use?

Yes, there are many sources of images, videos, audio recordings and even text that can be used by nearly anyone. Instead of a traditional copyright, some material is covered by a Creative Commons license that grants users permission to use that material. Be sure to pay attention to the terms associated with a particular piece of content that dictate whether it can be modified, used in a commercial setting or attribution is required. You can find sources for Creative Commons and other available material at [ConnectSafely.org/copyright](https://connectsafely.org/copyright).

5. What should students know about copyright?

Students should know that copyrights may, in some cases, restrict how they can use material that others have created. They should also know that copyright can also protect their own creations. Any discussion of copyright should be in the context of creativity, academic integrity and fairness. Students should understand when copyright may not apply as well as alternatives to copyright such as Creative Commons. Students should also understand how fair use does and does not apply.

WHY SHOULD STUDENTS LEARN ABOUT COPYRIGHT?

In this exciting era when we are all creators and publishers, we are empowering our students to "show what they know" by making graphics, creating videos, composing music, and more. This is worthwhile and engaging academic work. But frequently, student creations may include elements (music, illustrations, etc.) which draw from someone else's work. Then, when the assignment is complete, our students are often proud of their final products and even eager to share their work beyond the classroom. It is not unusual for students to build digital portfolios of their creations online. This can raise copyright problems. For example, if a student creates a video to show himself reciting and

analyzing a copyrighted poem for English class and chooses to use a copyrighted song in the background, he can share that video with his teacher and classmates as part of his academic activities because of fair use. But if the student is especially proud of his video and decides he wants to share it beyond his English class by publishing it on his YouTube channel, he could be infringing on the copyrights of both the poem and the song.

Of course, we want our students to be free to share and even publish their creative work if they want to. That's why it is important to preemptively teach them about how to find and use openly licensed and public domain materials. They also should learn about fair use and be aware that what fair use permits in the confines of their own classroom may differ from what would be allowed in works they intend to share publicly. When students publish their academic creations, they should know both how copyright protections apply to them and how to respect the copyright protections of the works they may have reused or remixed during the creation of their work. Terms like openly licensed, public domain, and fair use might not be familiar to all students and educators. Read on in this guide for more information about how to apply them to the classroom and to student work.

WHY SHOULD EDUCATORS LEARN ABOUT COPYRIGHT?

Just like students, educators have more opportunities than ever before to take advantage of creative works and incorporate them into their instructional designs. Teachers are designing slides, flipped video lessons, infographics, and even composing parody songs to help their students learn. Therefore, educators also need to think about how they're using copyrighted content in their own materials. They also may need to consider how their students will access these materials; sometimes how copyright applies may be different if a teacher's creation is only used in the four walls of the classroom than if the teacher wants to make the creation available online for her students or others to access from outside the classroom. Teachers should model and explain how they are paying attention to concepts like copyright and plagiarism as part of how they design these lessons. The next section will help educators understand the difference.

PLAGIARISM AND COPYRIGHT INFRINGEMENT

Most educators are familiar with the issue of plagiarism – the practice of taking someone else's work or ideas and passing them off as one's own. That's because they teach attribution and citation as part of the research process and because teachers have experience observing these guidelines in their own academic work. Both the concepts of attribution (and plagiarism) and copyright (and copyright infringement) are meant to protect the rights of the person who authored or created a prior work, but they do this in different ways:

- **Attribution** is meant to give proper acknowledgement to the creator and help the reader/viewer distinguish between what parts of a work are original and which are quoted or adapted from someone else's work. Often attribution is in the form of a bibliography or works cited. They are also included to guarantee academic integrity.
- **Copyright** is meant to give the creator a degree of control over their original work and how it is disseminated. In some cases, this means they may choose to require compensation or payment in order for others to use or view it.

The fundamental purpose of copyright protection is to provide incentives to writers, artists, and other creators to continue creating new pieces.

Acknowledgment alone wouldn't likely be enough incentive, so copyright often requires permission. That means that, unless usage is permitted under fair use, someone could provide proper attribution for a copyrighted creation, but still be infringing on the copyright if that person did not have the permission of the creator to use and publish the copyrighted work.

While it's fine to be inspired by others or build on the work of others, it's important not to take credit for other people's work and not to violate their rights under copyright. But if you understand under what conditions it's ok to incorporate other people's work into your own – including when to give credit and when to seek permission – you can let the creativity of others inspire and support creativity of your own!

WHAT DOES COPYRIGHT COVER?

We've already stated that the purpose of copyright is to encourage writers, artists, and other creators to produce new creative works by giving them some say over how their work is disseminated. But, which creative works are covered by copyright?

Covered by copyright:

Any original creative media – sound, image, video, or text – that is set in a tangible or digital form is covered by copyright. This means that, for example, a teacher's original video lesson or a student's original graphics or music compositions are protected by copyright. So are the most recent images, videos, and writing that others have created and shared both online and offline.

Not covered by copyright:

- Facts are not covered by copyright because they are not creative works.
- Ideas are not covered by copyright. The specific words or images an author uses may be protected by copyright, but not the underlying ideas the author's work communicates.
- United States government documents are not covered by copyright.
- Non-creative lists, such as a directory of phone numbers or a grocery list of ingredients, are not covered by copyright.
- Some creative works are sufficiently old that their copyright has expired (see below).

WHEN DO COPYRIGHT PROTECTIONS APPLY? WHEN DO THEY EXPIRE?

It is important to remember that copyright protections apply to an original creative work instantly and automatically as soon as the work is set in tangible or digital form. This means that as soon as a song is written or recorded, a painting is created, or an article is written, copyright protections apply to them. No formal registration is necessary (although there is a U.S. Copyright Office and there are some advantages to registering your copyright there). Nor is it necessary to put a © on your work, though doing so may remind others of your copyright.

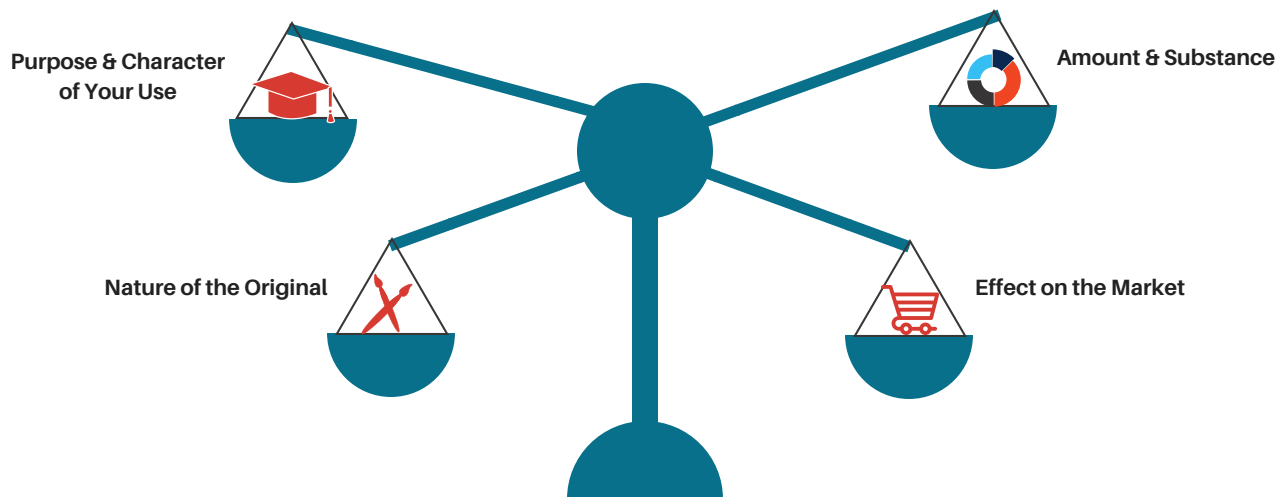
It's also worth noting that copyright protections do not last forever – eventually they expire. For example, any original creative work made before 1923 is no longer protected by copyright. For more on this, check out the Copyright Office circular on the Duration of Copyright (copyright.gov/circs/circ15a.pdf).

WHAT ARE THE COPYRIGHT PROTECTIONS?

To simplify a bit, copyright allows the writer, artist, or creator to control:

- Who may make copies of the work and under what circumstances.
- How the work may be distributed and in what forms.
- When and how the work may be displayed or performed.
- If a derivative work (like a spinoff or a translation) may be made using parts or all of the original creative work.

Fair Use: The 4 Factor Test



Creativity & Copyright / iKeepSafe.

So, when teachers and students come across original creative works – online or in print – and want to copy them, distribute them, show or perform them, or incorporate them into their own work, they need to be aware of copyright. In general, these kinds of activities may require a grant of permission or license from the copyright holder. For many educational uses, however, it may be OK for teachers and students to engage in these activities without the copyright holder’s permission due to a part of copyright called fair use.

WHEN CAN EDUCATORS AND STUDENTS TAKE ADVANTAGE OF “FAIR USE” OF COPYRIGHTED MATERIAL?

Fair use is an important part of copyright that allows people to copy or re-use a copyrighted work without the creator’s permission in limited ways that are still fair to the creator.

Copyright generally requires you to get permission before you copy, distribute, or re-use someone else’s copyrighted work. But sometimes, permission isn’t needed because what you want to do qualifies as fair use.

Fair use allows limited use of copyrighted work without permission for purposes such as news reporting, commentary, education, parody, and the creation of new works that use someone else’s creative work in entirely new ways.

There are examples that are familiar to educators: Imagine if copyright law

prevented students from using quotations from literature or research articles in their essays. Fortunately, this kind of copying – in short lengths, and not damaging to the author – qualifies as fair use. That means it is permitted without having to get the copyright holder’s permission. Other common examples include sharing a movie excerpt as part of a movie review or recording a TV show on your home DVR so you can watch it at a later time.

Unfortunately, there is no hard-and-fast rule about what counts as fair use. Instead, fair use is determined on a case-by-case basis using a legal balancing test that weighs four key factors and can sometimes be tricky to apply. Courts consider all four factors together – no single factor can determine the outcome one way or another. Under this legal test, a use is more likely qualify as fair use if:

1. You use the original for a new purpose such as commentary, news reporting, criticism, or education, or to create a new work that transforms the original by adding new expression. For example, using a whole song in a school project – an educational purpose – would generally be fair use. However, it might not qualify as fair use if the student wanted to expand the purpose by publishing the project to potentially a large online audience.
2. The original you want to use is primarily informative or factual in nature, as opposed to highly creative. (But, courts often give this factor less weight than the others, so highly creative works can still be subject to fair use when other factors point that direction.)
3. Where possible, you use only a small portion of the other person’s work and only as much as you need to make your point – such as a single paragraph from a much longer text or a short clip from a much longer video. In some cases, it is still fair use if you need a whole creative work, like a whole video or song, but in general the more you use the less likely it is to be fair use.
4. Your use won’t be able to replace the original in the marketplace – the owner/artist would still be able to distribute their work as they choose. Put another way: buyers looking for the original would not be satisfied with accessing your work instead. If your use could undermine the creator’s ability to sell or make money from the work, it’s less likely to be fair use.

In the education setting, it will generally be fair use when students reuse portions of someone else’s work in a school project, such as using images or songs for a presentation in class. But the fair use analysis can change if the students then posts those projects online to a potentially large audience, including on social media. The student would then have to consider the other factors, such as how much of the original they used and whether their posting of the project could hurt the market for the original.

WHAT TO DO IF IT'S NOT FAIR USE

If after using the balancing test it seems that fair use may not cover what a student or teacher wants to do, they could still try to obtain permission of the copyright holder. It could be as simple as writing an email to a photographer or composer. With that person's consent, the student or teacher would be free to engage in their proposed use of the photo or music without risk of violating copyright.

If fair use does not apply and permission from the copyright holder cannot be obtained, teachers and students should look for either public domain or openly licensed creative works. It is actually good practice to use public domain or openly licensed content because students and teachers are more likely to be able to publish their final work online without worrying about copyright infringement. Teachers and students should also think about whether they might be able to create their own content - using a camera on a smartphone, a graphic design program, or other tools - or find a fellow student to create it and give permission for use.

WHICH CREATIVE WORKS FALL IN THE PUBLIC DOMAIN?

There is one category of creative work that students and educators can use without restriction and without having to obtain permission or pay any fees: public domain.

Public domain means there is no copyright or that the copyright has expired, including any content created before 1923. Any material created by the U.S. federal government is in the public domain, including most photographs and documents from federal government websites that typically end in .gov. Government websites may sometimes contain some photographs taken by people who are not government employees or reports written by private contractors - but for the most part, material posted on federal government websites is created by government employees and thus is free to use. Government sites that have useful material include the National Park Service (nps.gov), the Library of Congress (loc.gov) and NASA.gov. Teachers and students can learn more about how copyright applies to government documents at the U.S. Government Works website (usa.gov/government-works).

Types of Creative Commons Licenses

License Type	Can someone use my work to make money?	Can someone change my work?
Attribution (CC BY)	Yes (✓)	Yes (✓)
Attribution-NonCommercial (CC BY NC)	No (✗)	Yes (✓)
Attribution-NonCommercial-NoDerivs (CC BY NC ND)	No (✗)	No (✗)
Attribution-ShareAlike (CC BY SA) (MUST ALSO BE LICENSED BY-SA)	Yes (✓)	Yes (✓)
Attribution-NoDerivs (CC BY ND)	Yes (✓)	No (✗)
Attribution-NonCommercial-ShareAlike (CC BY NC SA) (MUST ALSO BE LICENSED NC-BY-SA)	No (✗)	Yes (✓)

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WHAT ARE CREATIVE COMMONS LICENSED WORKS AND CAN TEACHERS AND STUDENTS USE THEM?

Some authors, artists, and creators choose to attach an open form of a copyright license to their work. Essentially, this means they've granted advance permission to others to use their creative work in certain ways. The most common open license is Creative Commons (creativecommons.org).

Works licensed under Creative Commons can have restrictions. For example, some licenses grant permission for non-commercial use only. A no-derivatives license permits others to use the work but not to modify it or re-mix it. Other Creative Commons licenses are broader, allowing re-use with few restrictions. Before using any Creative Commons content, read the summary of the license. (Don't worry, these are not long legal documents but simple instructions like "if you remix, transform or built upon the material, you may not distribute the modified material.") Most Creative Commons licensed works are available to use for free, but some creators charge for the initial download of the work or apply subscription fees to gain access. And remember, fair use may give educators and students additional leeway as long as the material is used strictly within the confines of the classroom.

Search.creativecommons.org is a website that lets you easily search several sources for images and videos that are covered under Creative Commons licenses. Google's Image Search also has a feature, within its Advanced section, that enables you to specify usage rights - for example, to look for images that are free to use, share, or modify.

There are other types of content licensing including so-called stock photos and clip-art. Many of these charge a fee (sometimes as little as \$1 for an image on websites like canva.com) but some can be free with certain rules and restrictions.

You'll find a directory of free and low-cost sources of content for use by students and educators at ConnectSafely.org/copyright.

COPYRIGHT PROTECTS YOUR STUDENTS' RIGHTS

As we mentioned we're all creators and every time any of us writes something or produces a video or audio, we're creating a copyrighted work, even if we don't register it with the U.S. Copyright Office or put a little © on our work. It's automatically protected by copyright. While many students probably don't think much about their own copyrights, it's important to point out that the law protects them. And, these days, it's not uncommon for teens and even younger children to earn money by posting to YouTube or Instagram. Also, in our information economy, it's increasingly common for people in the workforce to be creators of intellectual property. So, even if your students aren't lucky enough to earn millions on YouTube or Instagram, chances are pretty good that they will eventually be in a position to earn money by creating content either in their own business or for an employer.

JUST BECAUSE SOMETHING MAY BE LEGAL DOESN'T MEAN IT'S RIGHT

There are many things in life that may be legally permissible, but perhaps unethical or in violation of academic standards. For example, breaking a promise is not necessarily illegal, but many would agree that it is unethical. When it comes to accessing, creating, and sharing creative works, there are similar concerns about both laws and ethics.

For example, if a student were writing a paper or producing a video about bullying, it might be tempting to include a picture or video of a fellow student being bullied. Assuming the student took the picture, it may be legal to use that image, but that doesn't make it ethical. It is good etiquette to check with the person in the photo whose privacy you might be violating.

Another issue is giving credit to the source. For example, the free image sharing site *unsplash.com* says "You do not need to ask permission from or provide credit to the photographer." However, it goes on to say the photographers "appreciate a credit because it provides exposure to their work and encourages them to continue sharing." So, even though you may not be legally required to credit the photographer, it's still the right thing to do whenever possible.

Because its copyright has expired a student can legally use any work created prior to 1923, but if the student decides to include a picture of the Mona Lisa, it's good form to credit Leonardo da Vinci and perhaps even point out that the original is hanging in the Louvre.

If someone says something in conversation that you would like to repeat later, it is likely that copyright does not apply and you would not be violating their legal rights, but it might be courteous to mention them as the source of the quotation, even if it's something they said to you in private.

There are also credibility issues. If a student were to write a paper about the Statue of Liberty and point out that it weighs 225 tons, it wouldn't be legally or even ethically required to cite the source for that statistic. But, since it is highly unlikely that the student would independently know that, it would add credibility and be courteous to cite the source (which happens to be *libertyellisfoundation.org*). And there are times when even credible sources can be wrong, so by citing a credible source, the student is at least somewhat protected should the information turn out to be incorrect.

In short, copyright should not be the sole guide to questions of permission, credit, and citation. In a variety of scenarios, considerations related to ethics, courtesy, and credibility may counsel for going beyond what copyright law would require.

CLOSING THOUGHTS

By now you've probably figured out that copyright law is somewhat nuanced and that deciding what's allowed can be literally a bit of a balancing act. Still, there are some broad guidelines that we can turn to. If we or our students want to use content created by someone else, the right thing to do is to think carefully about whether that use is legal and ethical, and to credit the source.

Our hope is that you feel empowered to take advantage of the copyright protections that apply to your original creative works made both within and outside the scope of your work as a teacher. Be sure to make your students aware of their own copyrights and how to respect the rights of others while they are in your classroom and even when they are producing creative works outside of school.

While this guide clarifies some of the legal contours of copyright protections, it also highlights the considerable freedom that teachers and students have to use creative work in the education setting. Refer back to the guide often and share it with your students. And, by the way, this guide, while protected by copyright, is published with a Creative Commons license, so you are free to share with others. And like all works, you're free to quote from it under fair use (with attribution of course and - if you don't mind - a link back to *ConnectSafely.org/copyright*).

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