



Is it a fair use?

A Hands-On Discussion



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Resource Folder: <http://tinyurl.com/IsItAFairUse-Wrkshp-2016>

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<http://pixabay.com/en/scales-justice-law-equal-fair-152494/>

Session Goals

After this session, participants will:

- Be familiar with U.S. Copyrights
- Be able to identify when and how to evaluate a use as a 'Fair Use'
- Have experience using tools and resources for applying a Fair Use analysis

NOTE: This workshop's purpose is to provide information, resources, and facilitate discussion. It should not be construed as legal advice.

Session Activities

- U.S. Copyright overview
- 5-step evaluation process
- Fair Use Evaluator Tool
- Group activity: case study analysis
- Discussion

What is Copyright?

"The Congress shall have 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. Constitution, I S8

[Copyright](#) Definition

[Copyright FAQ](#) - U.S. Copyright Office

Copyright Basics

Copyright holder's **exclusive** rights for life + 70 years

- Reproduce the work
- Distribute the work
- Publicly perform the work
- Publicly display the work
- Publicly perform sound recordings by means of a digital audio transmission
- Create derivative works



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You may want to (legally) ...

- Reproduce
- Distribute
- Publicly perform
- Publicly display
- Publicly perform by means of a digital audio transmission, and/or
- Create derivations of . . .
 - . . . works for which someone else owns copyright



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5 Steps



- 1) **Is the work protected by copyright?**
- 2) Is there a specific exemption in © law that covers my use?
- 3) Is there a license that covers my use?
- 4) Is my use covered by fair use?
- 5) Do I need permission from the copyright owner for my use?

[A Framework for Analyzing any U.S. Copyright Problem.](#)

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Copyright Basics

Works that **can** be copyrighted:

- Literary works, musical, and dramatic works
- Pantomime & choreographical works
- Pictorial, graphic and sculptural works
- Sound recordings
- Motion pictures and other audiovisual works
- Computer programs
- Architectural works

Works that **cannot** be copyrighted:

- Ideas, procedures, and methods
- Titles, names, slogans (may be trademarked)
- Facts, news, and research data
- Works in the **public domain** <http://librarycopyright.net/resources/digitalslider>
- Unrecorded, unwritten, un“fixed” works

Step 1: Is the work protected by copyright?

No - it's a type of work that cannot be copyrighted

No - it's in the Public Domain

<http://librarycopyright.net/resources/digitalslider>

No - it's my original work -- and I did not sell or give away my rights

Yes, it is protected by copyright - See Step 2

5 Steps



- 1) Is the work protected by copyright?
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Step 2: Is there a specific exemption in © law that covers my use?

Examples of exemptions related to research and teaching

Section 108: Library copying

Section 109(a): First sale doctrine

Section 109(c): Exemption for public displays

Section 110(1): Displays/performances in face to face teaching

Section 110(2): Displays/performances in distance learning

Section 117: Computer software

Section 120: Architectural works

Section 121: Special formats for persons who are blind or have other disabilities

Persistent Links to library resources:

<http://www.lib.vt.edu/help/scholar/persistentlinks.html>

Know Your Copyrights chart:

<http://www.knowyourcopyrights.org/storage/documents/kycrmatrixcolor.pdf>

Also valuable:

Documentation of the exemption you used -- that you acted “in good faith.”

5 Steps



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3) Is there a license that covers my Use?

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Ask a Librarian | Find articles | Subject guides | Database lists | Summon | Help

Find a database

Find a database KEYWORD information Search

This search box finds library databases by their titles and descriptions. It does not search for articles within databases. Keyword searches won't work here. (If you don't know which database to use, try one of the links listed below.)

Databases by subject | Databases by format | General interest databases | Getting started with academic research

50 databases found

AGRICOLA: ProQuest [See more details](#)

AGRICOLA indexes citations for journal articles, books, proceedings, theses, patents, translations, audiovisual materials, computer software, and technical reports pertaining to all aspects of agriculture, life sciences, nutrition, and environmental science. This database provides selective worldwide coverage of primary information sources in agriculture and related fields. You can limit to peer-reviewed sources. 1970-present.

AIDS and Cancer Research Abstracts: ProQuest [See more details](#)

AIDS and Cancer Research Abstracts indexes citations from the worldwide scientific literature as related to AIDS, immunology, virology, and cancer genetics. Information featured in the database concentrates on both basic science research and clinical applications. You can limit to peer-reviewed sources. 1982-present.

Link **AIDS and Cancer Research Abstracts: ProQuest**

Description AIDS and Cancer Research Abstracts indexes citations from the worldwide scientific literature as related to AIDS, immunology, virology, and cancer genetics. Information featured in the database concentrates on both basic science research and clinical applications. You can limit to peer-reviewed sources. 1982-present.

Thumbnail

Alerting services

Exporting citations to EndNote

Article searching

- Conference papers, preprints, and working papers
- Patents and trademarks
- Professional and trade literature
- Reviews and critiques

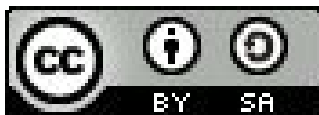
Subject Category Health and medicine

Connect to	Coverage online	See Addition title record
AIDS and Cancer Research Abstracts	1982 to present	AIDS and cancer research abstracts [electronic resource].
Permissions	Display / download / print limited portions. Display / download / print limited portions. Scholarly sharing.	
Restrictions	No systematic downloading / systematic printing / distribution. No commercial use. No removal / modification of copyright notice or disclaimer.	
Concurrent users	Unlimited	
Authorized users	Faculty, staff, students, and on-site public users	
Persistent Links	Persistent link to this record	

Screenshots taken from pages on lib.vt.edu, using Snippy screenshot tool and image editor, by Anita Walz.

3) Is there a license that covers my Use?
(or, could I use alternate material that has a Creative Commons license?)

Creative Commons Licenses



5 Steps



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Fair Use: 4 Factors

- 1) The purpose and character of your use
- 2) The nature of the copyrighted work
- 3) The amount and substantiality of the portion taken
- 4) The effect upon the potential market

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Fair Use Evaluator Tool

How It Works

1. Getting Started:

- Provide contextual information about your intended use
- Describe how your intended use relates to each of the four fair use factors
- Indicate how "fair" you feel your use is for each of the factors (based on the description & criteria you have provided) [\[getting help with criteria\]](#)

2. The Fair Use Evaluator:

- Saves your entries and issue a color coded "fairness" result, showing the average for the evaluations you provided. [\[why it isn't as simple as it sounds\]](#)

3. Provide Additional Information: [\[Optional\]](#)

- Add any other mitigating circumstances or information that you feel is important (or, if you determine your use is not fair, exit the tool)

4. Get a Hard or Electronic Copy:

- The Fair Use Evaluator will collate and publish a time-stamped PDF of your "Fair Use Evaluation" (using the information you've provided).

5. How to Use your Analysis :

- Share your analysis with colleagues, a librarian, or a copyright specialist for comment or to validate your results.
- Keep a copy for your files. [\[why is this important?\]](#)

Click here to see our [statement of privacy](#)

Click here to learn how to [modify this tool for use at your own institution](#)

Case Study Example

Dr. R is planning to teach a class on film that will include watching films, reading and writing film criticism, and a **student assignment to make a short film individually or with a small group.** One student plans to use an entire copyrighted song from a popular group in the background and plans to upload her completed film to YouTube as well. **Is the student's use of the song a fair use?**

Modified from a "Scenario for Copyright Framework Analysis," from Coursera hosted MOOC, Copyright for Educators & Librarians, taught by Kevin Smith, M.L.S., J.D., Lisa A. Macklin, J.D., M.L.S., Anne Gilliland, JD, MLS: <https://d396qusza40orc.cloudfront.net/cfel/Reading%20Docs/MOOCFinal.pdf>
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Case Study Example 2

- Library Training

Ms. R, an academic librarian, is planning to provide a training session for college instructors on library ebook platforms. To catch people's interest she wants to start the session with a clip of Pharrell William's song "Happy" to get everyone in a good mood. To be sure it'll work in any teaching environment she downloads the song file to her computer, and embeds the file in her PPT presentation. Later a participant asks if she can share her slides and she says she'll post them to SlideShare.

Case Study Group Activity

2 Groups

- 1) Open Group Case Study Document
 - Choose Group Recorder & Reporter
 - Open Fair Use Evaluator Tool

- 2) Analyze your case study for Fair Use applicability
 - Record your analysis in the Fair Use Evaluator tool and create a PDF
 - Have the PDF at hand for our full group discussion



Discussion

5 Steps



- 1) Is the work protected by copyright?
- 2) Is there a specific exemption in © law that covers my use?
- 3) Is there a license that covers my use?
- 4) Is my use covered by fair use?
- 5) **Do I need permission from the copyright owner for my use?**
- 6) Can I identify alternative content or create my own content to use?

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5) Do I need permission from the copyright owner for my use?

Resources for Getting Permission

How to Obtain Permission - a circular from the U.S. Copyright Office

<http://www.copyright.gov/circs/m10.pdf>

The Basics of Getting Permission, from Stanford University

<http://fairuse.stanford.edu/overview/introduction/getting-permission/>

6) Can I identify alternative content or create my own content to use?

Openly licensed Images

- 1) [Creative Commons Search](#) → Search via CC license on multiple content platforms (Flickr, Google, more)
- 2) [Flickr](#) → After you type in something to search, on the top left, use the 'Any License' dropdown to change to 'All Creative Commons Licences'
- 3) [Wikimedia Commons](#) - openly licensed or public domain
- 4) [Pixabay](#) - all images are CC0 (public domain)
- 5) **Tin Eye** - *Do you have a picture you found online and aren't sure of its license? [Paste it in Tin Eye](#) to find out where it's from.
- 6) Always [Attribute](#) when reusing Creative Commons works.

Resources

Copyright Definition

<http://www.copyright.gov/help/faq/definitions.html>

Copyright FAQ - U.S. Copyright Office

<http://www.copyright.gov:8081/help/faq/>

U.S. Copyright Office Records Search

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

Copyright Slider - Works in the Public Domain

<http://librarycopyright.net/resources/digitalslider/>

A Framework for Analyzing Any U.S. Copyright Problem

http://guides.lib.vt.edu/ld.php?content_id=9271483 modified by Anita Walz, [CC-BY-SA 4.0](#)

<http://tinyurl.com/5-stepsForCopyrightQs> by Smith, K., Macklin, L. A., and Gillilan, A., [CC-BY-SA 4.0](#)

Fair Use Evaluator Tool

<http://www.librarycopyright.net/resources/fairuse/howitworks.php>

How to Obtain Permission - a circular from the U.S. Copyright Office

<http://www.copyright.gov/circs/m10.pdf>

The Basics of Getting Permission, from Stanford University

<http://fairuse.stanford.edu/overview/introduction/getting-permission/>

Creative Commons Search filter - a starting point for finding openly licensed content

<https://search.creativecommons.org/>

Scholarly Communications (and Copyright), University Libraries

<http://scholar.lib.vt.edu/cgi-bin/comment.pl>

Follow the Four Factors of Fair Use (video) <http://youtu.be/mYB3f7U9NFs>

Fair Use Case examples

- Webster University, Fair Use by Use: <http://www.webster.edu/faculty/fair-use/use.html>
- Stanford University, Summaries of Fair Use Cases: <http://fairuse.stanford.edu/overview/fair-use/cases/>
- Coursera hosted MOOC, Copyright for Educators & Librarians, taught by Kevin Smith, M.L.S., J.D., Lisa A. Macklin, J.D., M.L.S., Anne Gilliland, JD, MLS, Scenario for framework analysis: <https://d396qusza40orc.cloudfront.net/cfel/Reading%20Docs/MOOCFinal.pdf> [CC-BY-SA 4.0](#)

Workshop Materials:

<http://tinyurl.com/IsItAFairUse-Wrkshp-2016>