



Addressing Copyright Anxiety: A Light-hearted, Practical Approach to Copyright Instruction

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Home / Archives / Vol. 5 No. 1: The Journal of Copyright in Education and Librarianship, Volume 5, Issue 1, 2021-2022 / Articles

Introducing the Copyright Anxiety Scale

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Abstract

Navigating copyright issues can be frustrating to the point of causing anxiety, potentially discouraging or inhibiting legitimate uses of copyright-protected materials. A lack of data about the extent and impact of these phenomena, known as copyright anxiety and copyright chill, respectively, motivated the authors to create the Copyright Anxiety Scale (CAS). This article provides an overview of the CAS's development and validity testing. Results of an initial survey deployment drawing from a broad cross-section of respondents living in Canada and the United States (n = 521) establishes that the phenomenon of copyright anxiety is prevalent and likely associated with copyright chill.



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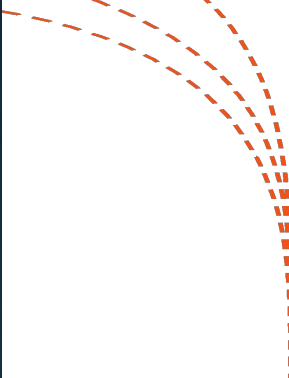
Wakaruk, A., Gareau-Brennan, C., & Pietrosanu, M. (2021). Introducing the Copyright Anxiety Scale. *Journal of Copyright in Education & Librarianship*, 5(1). <https://doi.org/10.17161/jcel.v5i1.15212>

I Can't Believe It's Not



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<https://copyrightliteracy.org/upcoming-events/icepops-international-copyright-literacy-event-with-playful-opportunities-for-practitioners-and-scholars>



A Framework for Analyzing any Copyright Problem.

One of the most difficult issues for educators and librarians, when faced with a copyright problem, is simply knowing where to begin -- which parts of the legal rules and doctrines apply to this specific problem.

To deal with this uncertainty, we suggest working through the following five questions, in the order they are presented. They are simple questions, but they are not easy to answer; all of the material we cover in this course is relevant to addressing one or more of them. But by working through them *in order*, it is possible to identify which of the parts of copyright law apply to the specific problem or fact pattern that you need to address.

The five questions that form this framework for copyright analysis are:

1. Is the work protected by copyright?
 - a. Is the work I want to use protected by copyright, or is it in the public domain?
 - b. If I wrote it, do I still own copyright, or did I sign over rights for my intended use to the publisher?
2. Is there a specific exception in copyright law that covers my use?
 - a. Is my intended use covered by a specific exception to the exclusive rights in the copyright law, such as the one for libraries or for classroom performances and displays?
3. Is there a license that covers my use?
 - a. Is there a Creative Commons license attached to the work? If so, can I comply with the terms of the license, or can I find another useful work that is CC-licensed?
 - b. If affiliated with an educational institution, is there a license that governs how the copyrighted material I'm accessing through my library can be used? If so, can I comply with the license terms? If you are uncertain, your librarian should be able to help you.
4. Is my use covered by fair use?
 - a. Four factors are:
 - i. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
 - ii. the nature of the copyrighted work;
 - iii. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
 - iv. the effect of the use upon the potential market for or value of the copyrighted work.

Adapted from:

<https://d396qusza40orc.cloudfront.net/cfel/Reading%20Docs/A%20Framework%20for%20Analyzing%20any%20Copyright%20Problem.pdf>

VT's version:

<http://hdl.handle.net/10919/56505>

MAKING OPEN EDUCATIONAL RESOURCES

Anita R. Walz
and
Julee P. Farley

with and for
PreK12



A Collaboration Toolkit for Higher Education

See Chapters 4 & 5

<https://pressbooks.lib.vt.edu/higheredk12collaborationtoolkit>

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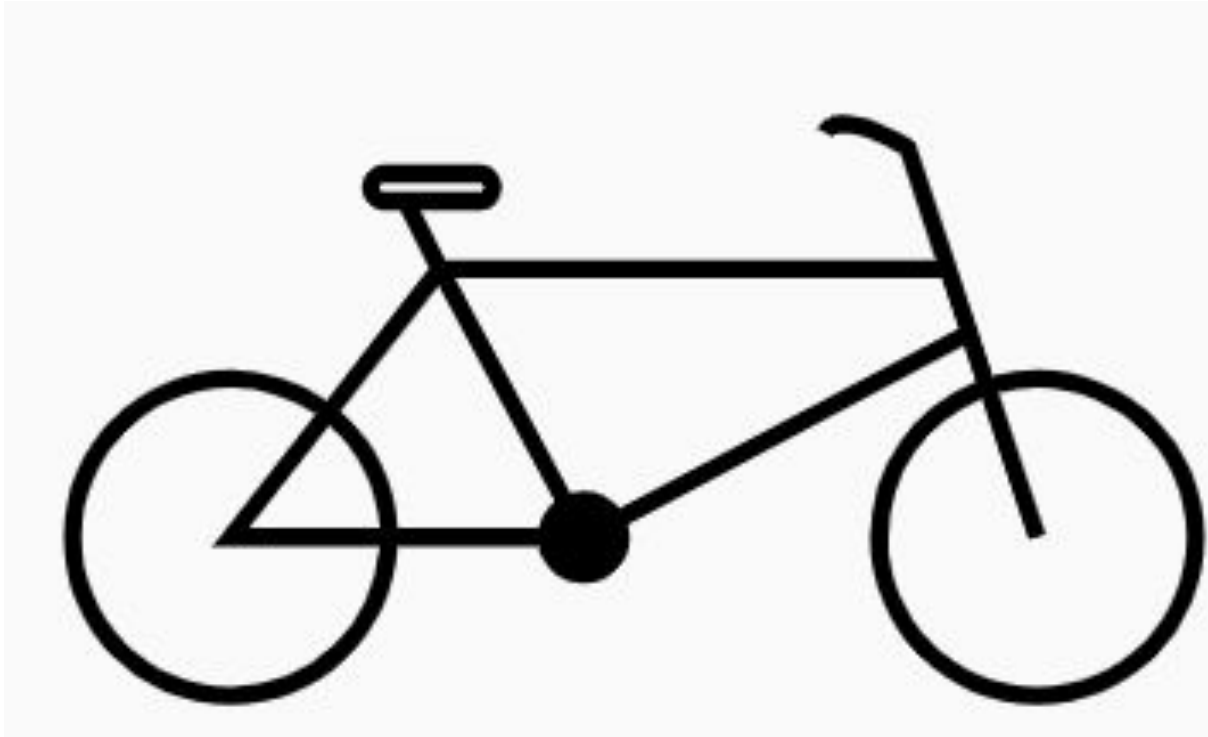
Two Dilemmas ... when creating with sharing in mind

1. May I use portions of **others' original works** in my open educational resource? How do I do this legally, ethically, and technically?
2. I want others to use my work in flexible ways. Of what do I need to be mindful when planning to **create and share my work**?



How copyright is like a bicycle

Ownership
Context
Permission

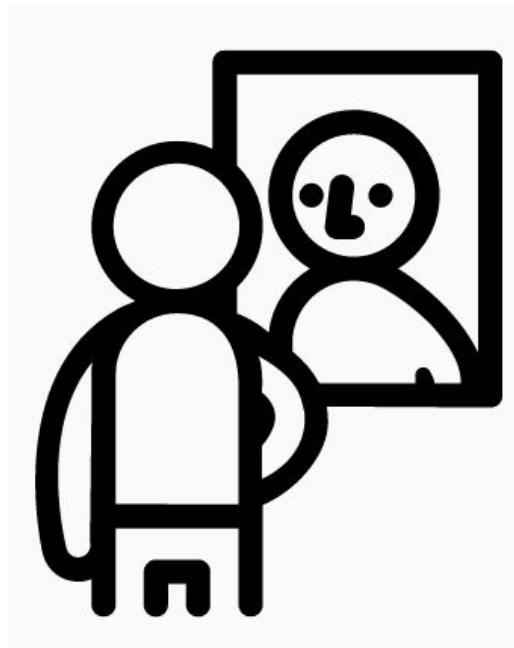


Principle 1: Unless otherwise marked, always assume that every artifact's copyrights are owned by someone.

You are a copyright holder.

Your **students** are copyright holders.

People and organizations that created things you read, watch, and listen to in any medium -- including **things that are freely available on the internet** -- are copyright holders.



Principle 2: Copyright is automatic. Copyrights are established the moment a creative work is *fixed in a medium*.

Automatically in copyright when made



Creative works in a fixed medium
(even when a © mark is not added!)

Not in copyright

- Ideas, facts, data, common knowledge
- Narrative, image, song... when there is no record
- Works clearly donated to the Public Domain
- Published in the US pre-1926*
- Created by U.S. Government employees acting in an official capacity

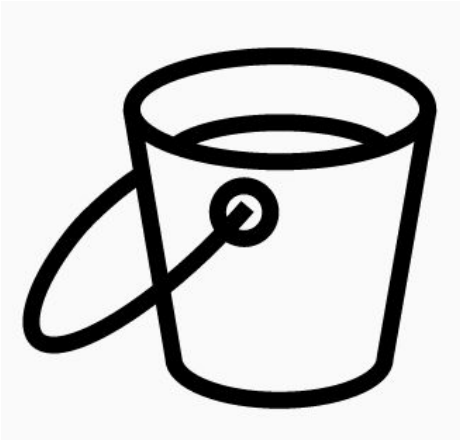
*The entry date of works into the Public Domain in the U.S. advances each year. As of Jan 1st 2023, it will be works published pre-1927. On Jan 1, 2024 it will be pre-1928, and so on. For more info, see:
<https://copyright.cornell.edu/publicdomain>

Principle 3: All published works are destined for the Public Domain (i.e. freedom from Copyright) ... but it takes a long while for them to get there.

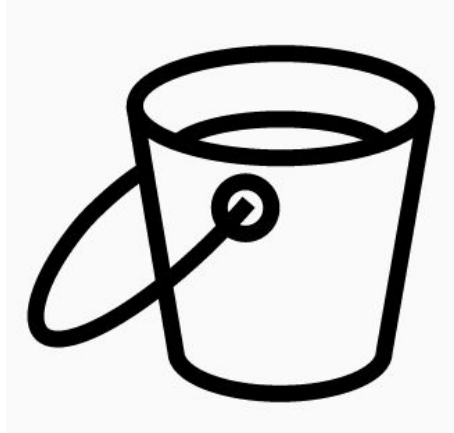


Three categories of copyright ownership

My original work
(If you did not sell or
give away exclusive
rights)



Someone else's work



Works in the Public Domain:
Marked as Public Domain or
created by a U.S. Gov Employee,
or published in the U.S. pre 192X*



© Bucket by Ema Dimitrova, BG - [CC BY 3.0](https://creativecommons.org/licenses/by/3.0/) <https://thenounproject.com/term/bucket/71705>

* Note that this is a rolling wall. Note also depending on the type of material, how they were published etc, that newer materials may also be in the Public Domain. See details at: <https://guides.library.cornell.edu/copyright/publicdomain>.

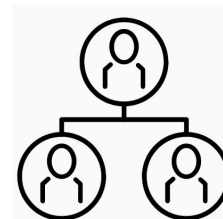
Principle 4: Copyrights can be thought of as a creator's monopoly -- in duration and use -- over a bundle of different rights



A **bundle** of different rights authors **automatically get** from creating original works in a fixed medium. Relevant here are *exclusive* rights to:

- Copy
- Create “derivatives” or copies with changes
- Publicly display and distribute

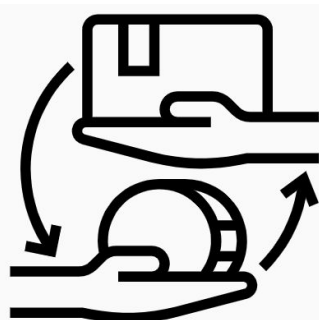
Unlike vegetables, **copyrights last your whole life + 70 years**



Principle 5: A creator/author may commoditize, license, donate, etc. parts or the whole of the bundle of rights



A commodity: The author may retain, sell, donate, and/or license irrevocably -- or for limited times, places, and mediums, or uses involving **parts of** or the **whole** bundle, to one party (exclusive) or with potential for various agreements with different parties (non-exclusive). (An author is not required to do any of these things. They may instead choose to do nothing.)





Used under Pexels license.

Categorizing works you may want to integrate into your own

My original work



If you did not sell or give away exclusive rights, use it as you wish.

Someone else's work



Do you have enough rights to justify your use? You'll need to research the terms of use for this item.



Assume © unless otherwise noted

Uh oh!

Works marked as Public Domain or created by a U.S. Gov Employee, or expressed in a fixed medium in the U.S. pre 1920-ish*



Use it as you wish [in the U.S.]

Citing your source is good scholarly practice but not legally required.

Public Domain in the U.S. is a moving wall. See <https://guides.library.cornell.edu/copyright/publicdomain>

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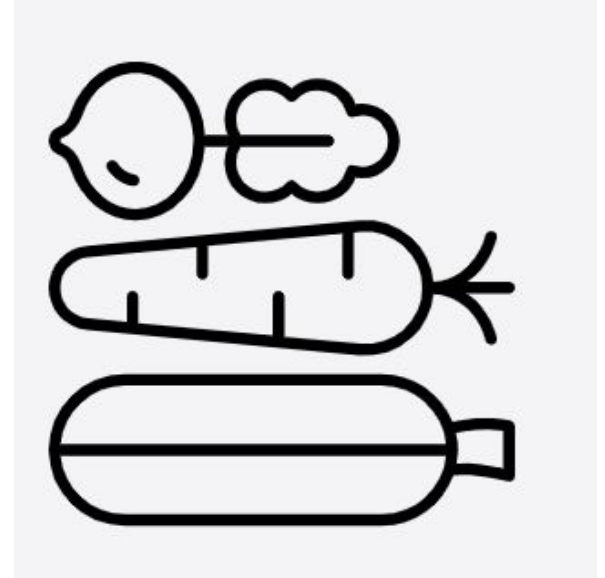
Principle 6: There ARE legal and ethical ways to use others' in-copyright works

Options for using others' works -- organized by level of effort

1. Choose to use works bearing a **license** that covers your specific, proposed use

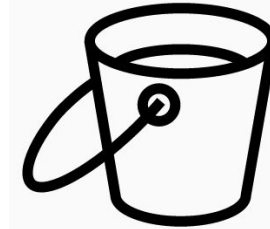
2. Leverage a U.S. Copyright **exemption** that addresses your specific, proposed use
 - a. Fair Use
 - b. TEACH Act

3. Obtain **permission** for your specific, proposed use



Resource: A Framework for Any U.S. Copyright Question

1. Is the work protected by copyright?
 - a. In Copyright and I own the copyright
 - b. **In-Copyright and someone else owns it**
 - c. In the Public Domain (≠ free online)



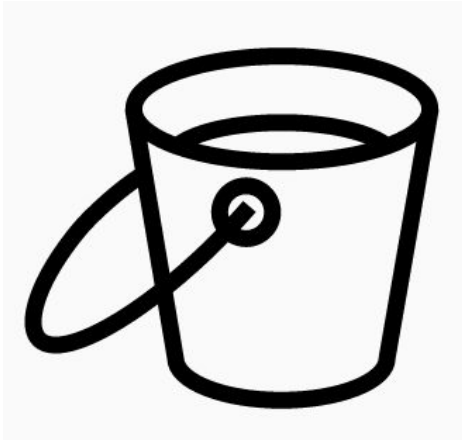
2. Do I already have permission? Is there a license that allows my proposed use?
 - a. Creative Commons license
 - b. Terms/Conditions of Use

3. Is there a specific exemption in copyright law that covers my proposed use?
 - a. Fair Use

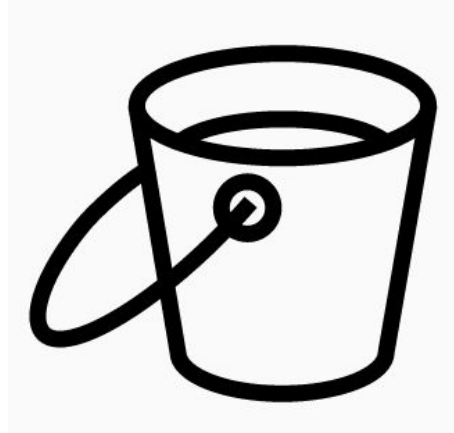
4. If all of the above failed, I need to obtain permission.

Three categories of copyright ownership

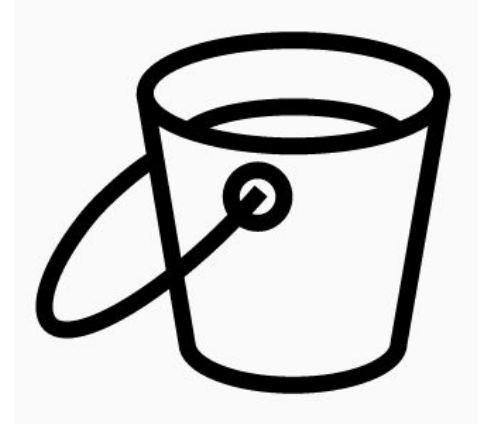
My original work
(If you did not sell or
give away exclusive
rights)



Someone else's work



Works in the Public Domain:
Marked as Public Domain or
created by a U.S. Gov Employee,
or published in the U.S. pre 192X*



1.

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* Note that this is a rolling wall. Note also depending on the type of material, how they were published etc, that newer materials may also be in the Public Domain. See details at: <https://guides.library.cornell.edu/copyright/publicdomain>.

Does the work *already* have a license permitting my proposed use?

1. **You might already have a license or permission**
 - a. Creative Commons licenses (which always require [attribution](#)) are one such license which is appended on an in-copyright work
 - b. Another license might be covered in the “Terms/Conditions of Use” section described on a website.

2.



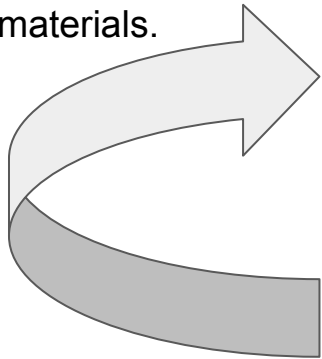
Best practices for attribution - Creative Commons licenses:
https://wiki.creativecommons.org/wiki/Best_practices_for_attribution

Creative Commons example



© David Lenker [Strawberry CC BY 2.0](#)

Attribution is **always required** when using CC-licensed materials.



Attribution — You must give appropriate credit, provide a link to the license, and indicate if changes were made. You may do so in any reasonable manner, but not in any way that suggests the licensor endorses you or your use.

No additional restrictions — You may not apply legal terms or technological measures that legally restrict others from doing anything the license permits.

Source: <https://creativecommons.org/licenses/by/4.0/>

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Best practice for attributing CC-licensed materials: https://wiki.creativecommons.org/wiki/Best_practices_for_attribution

If supplied, you must provide the name of the creator and attribution parties, a copyright notice, a license notice, a disclaimer notice, and a link to the material. CC licenses prior to Version 4.0 also require you to provide the title of the material if supplied, and may have other slight differences.

[More info.](#)

Under th

Is my proposed use more fair than infringing according to an informed Fair Use analysis?

FOUR FACTORS OF FAIR USE

Uses that are more fair

Non-profit edu, limited audience
Factual
Using only a small part
Zero or minimal impact

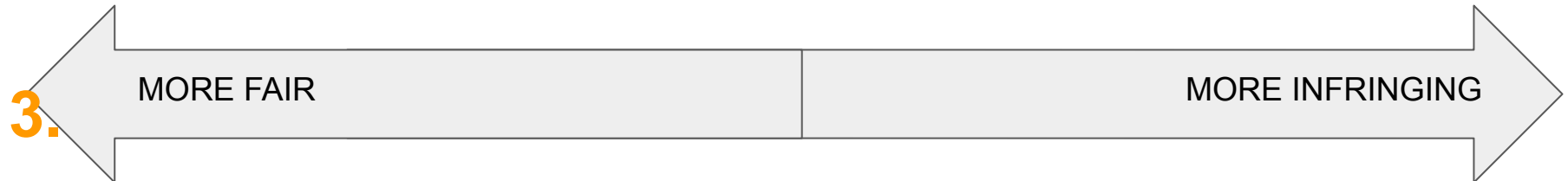
Type of use

- + Character of the work
- + How much you're using
- + Impact on the owner's profit

Uses that are less fair

Large or unlimited audience
Creative
Using a large % of the work
Direct financial impacts

= More fair or not very fair?



Your *proposed use* might (or might not) be more “fair” than more “infringing”



Code of Best Practices in Fair Use for Open Educational Resources

A Guide for Authors, Adapters & Adopters of
Openly Licensed Teaching and Learning
Materials

Facilitators:

Meredith Jacob
American University Washington College of Law

Peter Jaszi
American University Washington College of Law

Prudence S. Adler
American University Washington College of Law

William Cross
NC State University Libraries



<https://www.american.edu/wcl/impact/initiatives-programs/pijip/documents/upload/code-of-best-practices-in-fair-use-for-open-educational-resources.pdf>

Last resort -- **Obtain permission**

- 1) You've already confirmed the copyright status
- 2) Identify the copyright owner and their contact details.
- 3) Make your request: Describe the exact portion of the work you want to reproduce.
 - a) In detail, how you want to use the material (including duration and format)
 - b) Audience of your material
 - c) Whether the material is to be sold
- 4) (optional) Ask that the material be released under the same Creative Commons license as the overall work.
- 5) Get it in writing.

4. "How to Obtain Permission" <https://www.copyright.gov/circs/m10.pdf>

"Release form for Media, Illustrations, and Figures" <http://hdl.handle.net/10919/105384>

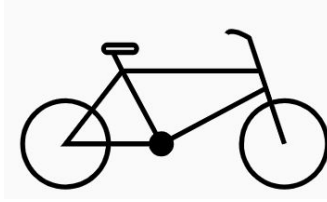
What is your “specific, proposed use”?

Examples

- Display a high-resolution image in a class lecture
- Insert an excerpt of a published paragraph or image and cite it. Distribute the *overall* work under a specific Creative Commons license.
- Reproduce thumbnail image on the internet in a non-commercial setting to a global audience
- Reproduce a high-resolution image in a commercial printed and (in perpetuity) digital publication with an anticipated print distribution of 1,000 and a digital subscriber audience of 15,000.

For which of these would you conduct a fair use analysis? For which would you already know that you should obtain permission?

What to do when you don't have enough rights (or are not sure that you have enough rights)



- Look for **alternatives**: Find openly-licensed or Public Domain equivalent material that meets the same need.
- Consider asserting a **fair use***. Use **less, smaller, lower resolution**. . . **only as much as is necessary**.
- Use a work in a different or **transformative*** way than it was intended. **Add value** to the work.
- Obtain **permission**. When, where, how much + may I release this under the same open license as my work?
- Create original work. Take **your own** picture. Make **your own** drawing. Put the idea in **your own** words. [and cite it!]

Mark third-party content within your document

Examples:

Creative Commons license

- [Best Practices for Attribution of CC-license content](#)
- Example: © David Lenker [Strawberry CC BY 2.0](#)

Public domain (not in copyright)

- [USGS Website](#). Public Domain

Permission

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Fair Use

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- © Author. Name of the work. Used under fair use.



Discussion