

FREQUENTLY ASKED QUESTIONS ABOUT COPYRIGHT

This FAQ is intended to assist University of Minnesota Law School faculty and staff in the use of copyrighted works for instructional purposes. Click on the questions listed below for answers and explanations. Additional information can be found in the resources listed at the end of this document. Federal copyright law can be found in [Title 17](#) of the United States Code.

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WHAT IS PROTECTED BY COPYRIGHT?

Copyright protection extends to "original works of authorship" that are "fixed in any tangible medium of expression" (e.g., books, journals, movies, art, music, computer code, Internet content). Copyright protection does not extend to:

- Most federal government publications (See [17 U.S.C. § 105](#))
- Procedures, processes, systems, methods of operation, or discoveries (See [17 U.S.C. §102](#))
- Works published under a "[creative commons](#)" license

HOW DO I DETERMINE IF A WORK IS COPYRIGHTED?

First, check to see if a copyright notice (© or "copyright" followed by the date) appears on the work you would like to use. The year of the copyright is important (see the next section). If there is no copyright notice, you will need to determine if the work is copyrighted by searching the [Catalog of Copyright Entries](#), covering 1891 to 1978. This work is also available on campus. Works from 1978 to the present can be found by searching the Library of Congress' [online catalog](#). It is also possible to have the United States Copyright Office conduct a search for you. Helpful information for determining whether a work is protected by copyright is found in [How to Investigate the Copyright Status of a Work \(Circular 22\)](#).

HOW DO I DETERMINE IF THE COPYRIGHT IS STILL IN EFFECT?

If you determine that a work is copyrighted, you need to determine if the copyright is still in effect, or if it has been renewed. Copyright protection does not last forever. Generally, works published before 1923 are no longer protected by copyright. Although copyrights can be renewed for another term, once the final copyright term has expired, the work is in the “public domain,” meaning that it can be used without any permission. The following tools can help you determine whether a work is still covered by copyright:

[Copyright Term and the Public Domain in the United States](#)
[Understanding Fair Use](#)

WHAT DOES COPYRIGHT PROTECTION MEAN?

During the term of a copyright, the copyright owner has exclusive rights to reproduce the work, to distribute the work, to make derivatives of the work, to perform or display the work, or to authorize others to exercise any of these rights. Unauthorized users of any of these rights must obtain the copyright owner’s permission. See [17 U.S.C. §106](#).

ARE THERE ANY LIMITATIONS ON THE COPYRIGHT OWNER’S RIGHTS?

There are some limitations on a copyright owner’s rights. The following two limitations are important for law school instruction:

- ***Exemption of Certain Performances and Displays.*** See [17 USC § 110](#).

This provision, which applies only to face-to-face instruction, permits the use of a copyrighted audiovisual work in class, without obtaining permission of the copyright owner.

- ***Limitations on Exclusive Rights: Fair Use.*** See [17 USC § 107](#).

Use of a copyrighted work is often considered “fair use.” When established, fair use permits certain limited uses of copyrighted works without the permission of the copyright owner.

HOW DO I DETERMINE IF MY USE IS “FAIR USE?”

You must consider all of the following factors anytime you wish to copy a copyrighted work for instructional use (e.g., distribute a copy in class, paste a copy into a PowerPoint slide, post a copy on Canvas, TWEN or the Law Library’s Course Reserves system) without the permission of the copyright holder:

- The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

The use of works in the classroom to directly serve the educational objectives of the class, without students being charged a fee for their copies, tends to be favored over the commercial use of works.

- The nature of the copyrighted work;

The use of factual works tends to be favored over use of highly creative works or of "consumable" works, such as test forms or workbooks. Where use of a creative work is necessary, use should be limited only to those portions of the work needed to serve the educational objectives of the class.

- The amount and substantiality of the portion used in relation to the copyrighted work as a whole;

The use of brief portions of works or excerpts from longer works, such as a chapter in a book or an individual article within a journal, tends to be favored over the use of large portions of works or excerpts that form the "heart of the work"; and

- The effect of the use upon the potential market for or the value of the copyrighted work;

The use should not compete with or adversely impact the market or sale of the copyrighted work, and the materials distributed in class should always bear a citation to the original source of publication and copyright information.

- The use is transformative.

Unlike the previous factors, this factor is not found in the text of the copyright law. It has evolved through judicial interpretation of the law. See [*Campbell v. Acuff-Rose Music*](#) (92-1292), 510 U.S. 569 (1994). A transformative work *is used in completely new or unexpected ways* that are different from its originally intended use (e.g., parodies, literary criticisms).

Several tools on the following site are available to help you determine whether your use of a work is "fair use:"

[Understanding Fair Use](#)

HOW DO I GET PERMISSION TO USE A COPYRIGHTED WORK?

If you determine that your proposed use of a copyrighted work does not fall within fair use or any other copyright exception, or does not fall within the terms of a license agreement, including a [Creative Commons](#) license from the author, you need to request copyright permission. You can

find helpful tips on obtaining permission [here](#). Alternatively, you can request assistance from the University of Minnesota Libraries' [Copyright Permissions Service](#).

CAN I UPLOAD COPYRIGHTED ELECTRONIC WORKS TO MY CANVAS OR TWEN SITE?

You do not have automatic permission to upload licensed digital works to CANVAS OR TWEN. For example, the [TWEN User Agreement](#) states in section 2.1.3:

You agree not to upload or post (i) any data, information, messages or other materials that you do not have the right to distribute or the provision of which violates the proprietary rights of others;

Our license agreements with database vendors specify when it is permissible to make copies of copyrighted works found in their databases. For details about what is allowed or prohibited by specific license agreements, please contact Connie Lenz (lenzx009@umn.edu) or Michael Hannon (mhannon@umn.edu). Often, these agreements apply regular copyright law and you will be required to do a fair use analysis before you upload a work.

CAN I LINK TO COPYRIGHTED ELECTRONIC WORKS ON MY CANVAS OR TWEN SITE?

Yes, license agreements usually permit you to *link* to licensed content. If a copyrighted work you wish to use is available in a database licensed by the university or on the Internet, it is advisable to provide a link to the work, rather than uploading the work. Linking requires more than pasting a URL into an online web page. The reference librarians can assist you if you need help. Instructions for linking are available at:

[Linking to E-Resources](#) (covers Westlaw, Lexis, and other Law Library licensed databases)

[Linking to University Libraries E-Resources](#) (JSTOR and other University Libraries licensed databases)

If linking is not possible, you will need to do a fair use analysis (see above) before uploading a document. If fair use is determined and you upload a work, be sure to limit access to the shortest time possible. You also need to include a notice that the work is protected by copyright. If you determine that your use is not a fair use, request permission from the copyright owner.

CAN I INCLUDE COPYRIGHTED WORKS ON THE LAW LIBRARY'S COURSE RESERVES?

Hard copy copyrighted works can be placed on reserve at the circulation desk at any time without permission. Law Library staff will provide links to any licensed electronic content that you would like to have on course reserves. If you would like to have a work digitized and uploaded to reserves, you first need to do a “fair use” analysis, or obtain copyright permission for including copies of any copyrighted works. You will need to submit a form indicating copyright compliance.

See details at <https://www.law.umn.edu/library/faculty-services/instructional-support>

WHERE CAN I FIND MORE INFORMATION THAT MIGHT HELP ME WITH MY COPYRIGHT QUESTIONS?

The University Libraries provides additional information at <https://www.lib.umn.edu/copyright>.

The following sources from the Association of Research Libraries (ARL) also contain useful information for understanding how to apply copyright law in your instruction:

[Fair Use FAQ for Professors](#)

[Using Copyrighted Works in Your Teaching—FAQ: Questions Faculty and Teaching Assistants Need to Ask Themselves Frequently](#)

[Know Your Copy Rights](#)

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