

Permissions Guide For Educators

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Preschool, Lower Primary, Upper Primary, Middle School, High School, Community College / Lower Division, College / Upper Division, Graduate / Professional, Career / Technical, Adult Education

Arts and Humanities, Business and Communication, Mathematics, Social Science

SUMMARY:

This guide provides a primer on copyright and use permissions. It is intended to support teachers, librarians, curriculum experts and others in identifying the terms of use for digital resources, so that the resources may be appropriately (and legally) used as part of lessons and instruction. The guide also helps educators and curriculum experts in approaching the task of securing permission to use copyrighted materials in their classrooms, collections, libraries or elsewhere in new ways and with fewer restrictions than fair use potentially offers. The guide was created as part of ISKME's Primary Source Project, and is the result of collaboration with copyright holders, intellectual property experts, and educators.

LEARNING GOALS:

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About this Guide

This guide is intended to support curriculum developers--including educators, curriculum experts, librarians, and others--in determining the legal ways that they can use digital resources created by others in their own lessons and collections.

The guide also serves as a primer on *how to seek permission to use* resources that are currently under copyright. It includes considerations around whether to ask for permission, as well as resources to aid in conversations and negotiations with rights holders.

Notes: The context of your particular use matters greatly, and this guide does not identify all legal issues that may arise from your use. This guide only concerns U.S. copyright law. This guide provides an introduction to some of the copyright issues you may face, but is not intended to be comprehensive and is not a substitute for legal advice. We do not guarantee the accuracy or completeness of this guide, or of any third party resources it links to. Consult an attorney for advice regarding your specific case if needed. There may be important legal issues beyond copyright – for example, trademark infringement, defamation, and violation of the privacy or publicity rights of others – that may be implicated by your use of OER Commons or other resources.

Understanding Copyright

What is Copyright?

Copyright is a form of legal protection that affords the copyright owner the exclusive rights to, among other things:

1. Reproduce (i.e., copy)
2. Distribute
3. Publicly perform



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4. Publicly display
5. Create “derivative works”

A “derivative work” is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a “derivative work”.

Without permission from the copyright owner, or an exception to the exclusive rights (such as fair use), it is a violation of copyright law to exercise any of the copyright owner's exclusive rights.

In general, copyright is secured automatically as soon as a work is created, regardless of whether or not the work is published. No registration or other action in the Copyright Office is required. There is no longer a requirement that a copyright notice be present on a work in order for copyright to be secured.

What is a Copyright License?

A copyright license is a grant of permission to use certain copyright rights. Copyright licenses often have specific limitations that are outlined; for example they may:

- Be limited in time
- Contain geographical restrictions
- Only allow for educational uses
- Only grant permission to use some of the copyright rights (for example, a license may grant permission to download and distribute a work, but not the right to create derivative works)

[Creative Commons licenses](#), discussed later in this toolkit, are copyright licenses. Many works in OER Commons are Creative Commons licensed. There are six main Creative Commons licenses. All require that any uses include attribution to the original author; some permit only noncommercial uses; some do not allow the creation of derivative works. When evaluating the permitted scope of uses, read all copyright licenses closely. Using a work in a manner that exceeds

the scope of permissions granted in a license is copyright infringement.

Reference Materials

- The U.S. Copyright Office's [informational materials on U.S. copyright](#).

What is Fair Use?

Fair use is a limitation on a copyright owner's exclusive rights, set forth in the Copyright Act. See 17 U.S.C. §107. If a use is a legitimate fair use, permission from the copyright owner is not needed.

It can be difficult to determine whether a given use is a fair use. Fair use evaluations are highly fact-specific, and depend greatly on the facts of your particular situation. Claiming fair use involves risks, and fair use law can be very complex. Exercising fair use is a right, not an obligation. In evaluating whether a given use is a fair use, the Copyright Act sets forth the following factors:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work.

Reference Materials

- Stanford University Libraries, [Measuring Fair Use: The Four Factors](#)
- Center for Media & Social Impact, [Resources on fair use](#)



What is the “Classroom Use Exemption”?

The Classroom Use Exemption ([17 U.S.C. §110\(1\)](#)) applies in a **narrow range of situations**. To qualify for this exemption, you must be:

1. in a classroom ("or similar place devoted to instruction"),
2. there in person, engaged in face-to-face teaching activities, and
3. at a nonprofit educational institution.

If you qualify for the exemption, you may **perform or display** copyrighted works – but not exercise any other exclusive rights of the copyright owner (e.g., this exemption does not entitle you to copy, distribute or create derivative works). In the case of a motion picture or other audiovisual work, you may only perform or display lawfully-made copies.

By way of example, if you qualify for the classroom use exemption, you can, without seeking permission, without giving anyone payment, and without having to deal with the complications of fair use:

- Play movies and music for your students, at any length (only from legitimate copies).
- Show students images, or original artworks.
- Lead students in performances of musical compositions, scenes from plays, and the like.

Even if you qualify for the classroom use exemption, it **does not apply** to:

- Online activities of any kind (e.g., a class website, any activities that are not face-to-face and in-person)
- Making or distributing copies of any kind (e.g., handing out readings in class)

What is the TEACH Act?

The TEACH Act is codified at 17 U.S.C. 110(2). It provides that it is not copyright infringement for teachers and students at an accredited, nonprofit educational institution to **transmit** certain **performances and displays** of copyrighted works as part of a course if certain

conditions are met. If these conditions are not or cannot be met, use of the material will have to qualify as fair use or permission from the copyright holder(s) must be obtained.

The requirements of the TEACH Act are onerous, and require the cooperation of your educational institution, including the IT department. Implementing TEACH can be very difficult because of its complexity and the many detailed requirements for instructors, technologists, and institutions.

Some of the requirements you and your institution must meet before being able to take advantage of the TEACH Act include:

- You must be an accredited nonprofit education institution or governmental body;
- You can perform a nondramatic literary work, a nondramatic musical work, or reasonable portions of any other work;
- You can display any other work in an amount comparable to that typically displayed in a live classroom setting;
- You cannot (under TEACH) use works produced or marketed primarily for performance/display as part of mediated instructional activities transmitted via digital networks or unlawfully made copies;
- The works used must be under the actual supervision of an instructor as part of a class session;
- The works must be used as part of systematic mediated instructional activities and directly related and of material assistance to the teaching content;
- You may digitize an analog work if no digital version is available to the institution or the digital version is locked to prevent TEACH uses.

In addition, there are a number of technical requirements:

- The transmission (of the performance or display) must be made solely for and reception limited to students enrolled in the course, i.e., access controls
- You must institute technological measures that reasonably prevent retention in accessible form for longer than a class session (this means to prevent printing, saving, downloading, etc.)
- You must not interfere with technological measures that prevent retention and dissemination put there by the copyright holder

And, your institution must:

- Promulgate copyright policies
- Provide accurate information about copyright

- Promote copyright compliance
- Provide notice to students that course materials may be copyrighted

Reference Materials

- [Copyright Law and Distance Education: Overview of the TEACH Act](#)
- [Copyright Checklist: Compliance with the TEACH Act](#)
- [TEACH Act Toolkit](#)

Are There Other Exceptions and Limitations to Copyright?

Absolutely. A full list is beyond the scope of this guide, but some other exceptions include:

- The first sale doctrine: Once a physical copy of a copyrighted work has been sold, that particular copy may be redistributed by resale, lending or donations. In general, the doctrine does not apply to digital works, and other exceptions apply.
- Idea/expression dichotomy: ideas are not copyrightable; the expression of those ideas is copyrightable. The rule is simply stated, but can be complicated to apply.
- 17 U.S.C. 108 provides certain exceptions for libraries and archives.
- 17 U.S.C. 117 sets forth a number of limitations on exclusive rights related to computer software.

Are There Other Rules Imposed By Copyright Law That Are Not Covered Here?

Yes. This guide is not intended to be comprehensive. By way of example, [17 U.S.C. 1201](#) makes it illegal to circumvent a technological protection measure (such as copy protection, or digital rights management software). In other words, you may not descramble a scrambled work, decrypt an encrypted work, or otherwise avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner. There are some limited exemptions available.



What is the Public Domain?

Public domain works are not restricted by copyright, and do not require a license or fee to use. Public domain works may be used without any restrictions--they may be downloaded, shared, edited, remixed, repurposed, etc.

Works in the public domain are those whose copyright rights have expired, have been forfeited, or are inapplicable. There are three main categories of public domain works:

1. Works that automatically enter the public domain upon creation, because they are not copyrightable. For example, book titles, short phrases and slogans, ideas and facts, processes and systems, and certain government documents;
2. Works that have been assigned to the public domain by their creators; and
3. Works that have entered the public domain because the copyright on them has expired.

Determining Permissions

Look carefully at the resource you want to use and any information surrounding the resource; also review the "about" and "terms of use" pages of the resource's website for permissions information.

Can you find a copyright license or other form of permission that applies to the resource?

Can you determine if the resource falls into one of the categories below?



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Determine if the Resource is in the Public Domain

The mere fact that a resource is made available in a collection of public domain materials, or is on a list of public domain materials is insufficient; you should independently determine whether or not a resource is in the public domain by conducting an appropriate analysis of its copyright status.

Examine the resource and determine whether it is in the public domain. It can often be difficult to determine with certainty whether a given work is in the public domain. Public domain status is likely (for copyrighted works *other than sound recordings*) for the following situations:

- The resource was published in the United States before 1923
- The resource was published before 1964 and the copyright registration was not renewed
- The resource was published without a valid copyright notice prior to 1977

Reference Materials

- UC Berkeley's [Public Domain Handbook](#) for determining whether a work is in the public domain.

Determine if the Resource is a U.S. Government Work

Examine the resource to determine if it is a U.S. government work prepared by an officer or employee as part of that person's official duties. These works are free to use without restrictions. This does not apply to works created by U.S. state governments, or the governments of other jurisdictions – such works may be protected by copyright.

U.S. government records and works often *contain* or include within them copyrighted works, so examine the resource and read the terms of use carefully. For example:

- A U.S. federal court opinion written by a U.S. federal judge may contain copyrighted materials, such as photographs. The fact that such a photograph appears in a judicial opinion does not make it a U.S. government work; it is still subject to copyright protection.

- The Congressional Record is a U.S. government work, but it may contain documents and other materials that remain subject to copyright protection.
- A sound recording or photograph that appears in the collection of the Library of Congress or National Archives is not necessarily a U.S. government work. The photograph may not have been prepared by an officer or employee of the United States government as part of that person's official duties.

Determine if the Resource is Creative Commons Licensed

Resources that are Creative Commons (CC) licensed are free to use with certain restrictions depending on the specific license.

Look for the following licensing terms:

- CC0 - In general, you may treat the resource as if it were in the public domain.
- CC BY - Attribution to the author/creator required.
- CC BY-SA - Attribution required, and you agree to license new derivative versions of the resource that you create under CC BY-SA as well.
- CC BY-NC - Attribution required; non-commercial use only; commercial use requires a separate, negotiated license.
- CC BY-ND - Attribution required; no derivative works permitted; creation of derivative works requires a separate, negotiated license.

Read the license carefully and follow its terms. Failure to abide by the restrictions in a Creative Commons or other license is copyright infringement. Outside of CC0, all CC licenses require attribution--meaning, if you use the resource as part of your teaching, you must give credit to the original author or creator. For guidance on how to attribute properly, see: http://wiki.creativecommons.org/Best_practices_for_attribution.

Determine if the Resource Has Another License

Look carefully to identify terms of the license and comply with its restrictions.

If your intended use of the material is not permitted by the license, and does not fall within a copyright exception or limitation (such as fair use), contact the rights owner(s) for permission.

Seeking Permission to Use

1. Determine Whether You Need to Ask for Permission.

You do **not** need to ask permission if:

- The resource is in the public domain. See UC Berkeley's [Public Domain Handbook](#) to help determine if the work is in the public domain.
- It is a U.S. government work that was prepared by an officer or employee as part of that person's official duties.
- Your intended use falls within a copyright exception or limitation (such as fair use).
- The way that you want to use the resource is in compliance with the terms a copyright license that applies to you (i.e., you already have permission in this case).



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You do need to ask permission if:

- You wish to use a resource that is protected by copyright, and your intended use would be infringing copyright law if you were absent permission from the rights owner.
- You wish to use a resource in a way that is *beyond* the scope of the permission granted to users in an applicable copyright license.

You should consider asking for permission if:

- You are uncertain about whether your intended use is permitted by an applicable copyright license.
- You are uncertain about whether a work is protected by copyright.
- You are uncertain about whether your intended use falls within a copyright exception or limitation (such as fair use).

2. Ask for Permission.

Work through the following steps when asking a rights owner for permission:

a. Identify the owner.

Sometimes identifying the owner is easy – if the work contains a copyright notice that identifies the owner, you can simply contact the owner and ask for permission. Sometimes, identifying the owner can be more challenging – for example, companies change ownership, owners are deceased, and the like. Sometimes a diligent search of the copyright records can reveal who owns rights in a work.

Many copyrighted works have *more than one owner*, each with separate rights in the works. You may or may not need permission from each owner, depending on which rights you need to license. For example, if you want to use recorded music, you will generally need to obtain permission from:

- The record company, which owns the sound recording copyright
- The music publisher, who owns a copyright in the musical composition
- The artists themselves (or their estates)

On the other hand, if you merely want to publicly perform the musical composition, you would not need permission for the sound recording. Each industry has its own customs and practices regarding copyright licensing and permissions; be sure to research carefully to determine that you have identified all owners of the rights you need, and that you have identified them correctly.

b. Identify the rights you need.

Be clear about the uses you intend to make, and negotiate with the rights owner(s) for those rights.

- Do you need only the right to reproduce?
- Do you want to modify the work?
- Do you want to publicly perform or publicly display the work?
- Do you need exclusive or nonexclusive rights?
- Will you need the rights forever, or just for a limited term of years?
- Will you need the right to post the work on the internet, adapt the work into a film?
- Will you need worldwide rights, or just U.S. rights?

c. Compile your message.

Craft a message to the owner of the resource, or to the person responsible for the permissions agreements related to the resource. Include any information about the rights you would like to secure, how you would like to use and share the resource, and what parties the agreement is between (e.g., between you and the publisher, the publisher and the public at large, etc.). A sample letter to rights holders is provided below.

Dear [insert name if you can get it],

I am writing on behalf of the Primary Source Project. We are an initiative comprised of teacher leaders to create K-12 lessons that embed informational texts, or “primary sources,” in alignment with new education standards known as the Common Core State Standards.

The overarching aim of our project is to offer lessons and primary sources that support students in developing the skills called for in the Common Core State Standards, including close reading of primary source texts, critical thinking, and problem solving. The lessons developed as part of the project will be freely available for access online through a digital library.

In order for your work to be included in our online collection, we would like to ask you to license your work under a Creative Commons license. Such a license will make it possible for other teachers to make important uses of your work, and to further share those uses with others. Creative Commons offers six licensing options (<https://creativecommons.org/licenses/>), which allow licensors to choose (1) whether or not to allow derivative works; (2) whether or not to allow commercial uses; and (3) whether or not derivative works, if allowed, must be licensed pursuant to the same terms as the original work (“share-alike”). All Creative Commons licenses require attribution.

Our project encourages licensors to choose a Creative Commons Attribution (CC BY) license from among those options presented. It is our position that this option provides an educational user with the greatest degree of freedom while at the same time preserving and extending an author’s original authorship in derivative works.

Thank you very much for your time and attention to this matter. We look forward to discussing with you how the Work can be included in our exciting new educational project.

3. Negotiate Terms and Payment if Needed.

Rights owners may respond to your request with their own licensing terms, either formally in the form of an agreement that they've constructed, or informally in the form of an email text. They may, for example, indicate that you or your users are welcome to include the resource in your collection, but that no derivative works may be made. Many for-profit rights owners may be uncomfortable licensing the right to create derivative works of their material to the public. Thus,

you may have better luck negotiating such rights *for a specific project*. Alternatively, if derivative work rights are important to you, it may be most efficient to start with nonprofit rights owners, particularly those in the education industry, as they are most likely to be familiar with, and supportive of, open access principles.

Rights owners may or may not require a fee for permission. Fees often vary based on the size of the audience your work will reach, whether the use is commercial or noncommercial, the number and kind of rights you wish to license, and the like.

4. Get Your Permission Agreement in Writing.

Obtain a written copyright license that clearly describes the scope of permission.

Sometimes, in addition to getting permission for yourself, you may want to get permission for the public generally. Below is an example of a permissions agreement to rights owners asking them to grant a Creative Commons license to the public.

Owner of the Work:

Owner Address and Contact:

Title of the Work:

Description of the Work:

Year of first publication of the Work:

Creator(s) of the Work, and any others designated to receive attribution:



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URI or hyperlink to the Work:

Preferred form of copyright notice/markings:

I, the rights owner for the Work(s) set forth above, hereby license the Work(s) pursuant to the following Creative Commons License (please initial only one option):

Creative Commons Attribution-ShareAlike (CC BY-SA), the full text of which is available online at <https://creativecommons.org/licenses/by-sa/4.0/legalcode>.

Creative Commons Attribution-NonCommercial-ShareAlike (CC BY-NC-SA), the full text of which is available online at <https://creativecommons.org/licenses/by-nc-sa/4.0/legalcode>

Other [fill in the blank]:

I further authorize the [your name or name of your institution] to create, publish and distribute marked copies of the Work(s) reflecting the CC license terms I have selected in accordance with Creative Commons marking guidelines (http://wiki.creativecommons.org/Marking_your_work_with_a_CC_license), or in any other reasonable manner.

I represent and warrant that I am the copyright owner of the Work(s), and/or that I am authorized to act on behalf of the copyright owner of the Work(s), and that the Work(s) are hereby licensed pursuant to the above-noted Creative Commons license.

Signature:

Name:

Date:

Please complete, sign, and date this form and return original signed copy to:

Institution/Individual Name:

Address:

Phone/Fax:



Email:

Reference Materials

- Stanford University's [introduction to getting permission](#).



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