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# Copyright in Classroom Materials: Videos, Illustrations and Photographs

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# Copyright in Classroom Materials

Videos, Illustrations and Photographs

Michael Priehs and Joshua Neds-Fox  
Wayne State University



# What will we talk about?

1. Copyright
2. Fair Use
3. Application: Video and Images
4. Resources



# We aren't lawyers.

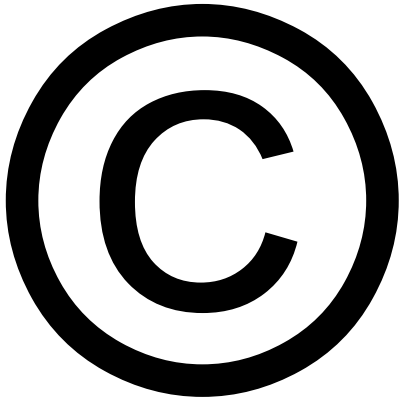


This isn't legal advice.  
You should consult a  
lawyer.

Image credit: <https://thenounproject.com/term/justice/112513/>, Creative Stall

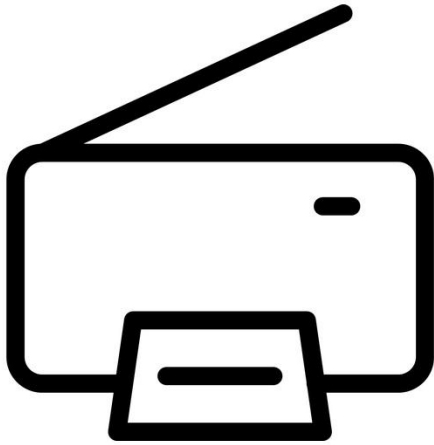


# So what is copyright?



Copyright is a set of laws designed to give creators a suite of rights over their original works of authorship.

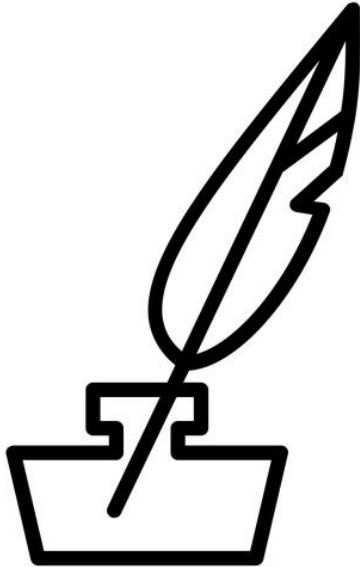
# Rights?



Yes, copy rights. These rights include:

- **Reproducing** the work in copies
- **Distributing** copies
- Creating **derivative works** or translations
- **Performing** or **displaying publicly** or digitally
- **Authorizing others** to exercise any of these rights

# But why?



“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.”

*United States Constitution, Article I, Section 8*

Image credit: <https://thenounproject.com/term/ink/90449/>, Clea Doltz



# Where does it come from?



The Constitution.

The Copyright Code.

The Courts.



# What does copyright protect?



“...**original** works of authorship **fixed** in any tangible medium of **expression**...”

*USC 17 § 102 (a)*

Image credit: <https://thenounproject.com/term/lock/62664/>, Arthur Shlain



# Such as?

- “(1) **literary works**;
- (2) musical works, including any accompanying words;
- (3) dramatic works, including any accompanying music;
- (4) pantomimes and choreographic works;
- (5) **pictorial, graphic, and sculptural works**;
- (6) **motion pictures** and other audiovisual works;
- (7) sound recordings; and
- (8) architectural works.”

*USC 17 § 102 (a)*



# Anything it does NOT protect?



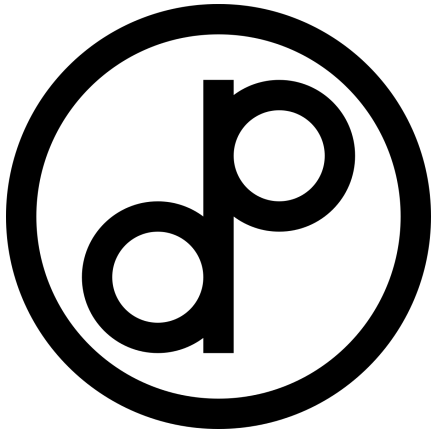
“In no case does copyright... extend to any **idea, procedure, process, system, method of operation, concept, principle, or discovery...**”

*USC 17 § 102 (b)*

Image credit: <https://thenounproject.com/term/unlock/62667/>, Arthur Shlain



# What about the Public Domain?

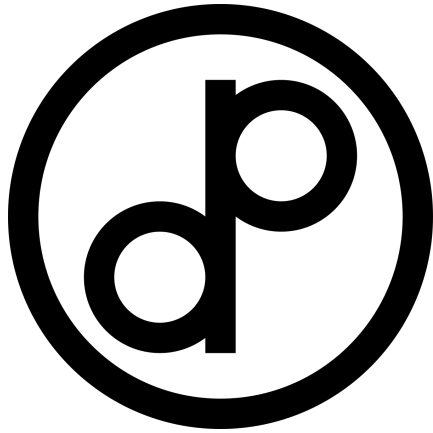


The Public Domain refers to works that were created in certain time periods that are no longer protected by copyright.

The following works are in the Public Domain:

- Works published prior to 1923
- Works published between 1923 and 1963 without a copyright notice
- Works published between 1923 and 1963 with a copyright notice but without the copyright being renewed
- 63-77: it's tricky

# So how long do copyrights last?



Good question...

Death of creator + 70 years

(Corporate: earlier of 95 yrs  
from publication or 120 from  
creation)

# What is Fair Use?

Section 107 of the Copyright Code gives the public rights in balance against copyrights. Each use must be analyzed on a case-by-case basis.

Preamble specifically mentions “criticism, comment, news reporting, **teaching (including multiple copies for classroom use), scholarship, and research**” as domains where Fair Use is applicable (non-exclusive).



# How is Fair Use analyzed?



There are four factors that must be considered in determining whether or not a particular use is fair. These factors are:

1. The purpose and character of the use
2. The nature of the copyrighted work
3. The amount and substantiality of the portion used
4. The effect of the use on the potential market for the copyright work

Image credit: <https://thenounproject.com/term/magnifying-glass/15795/>, gwenaelle georget



# Fair Use Myths

If I'm not making any money off it, it's Fair Use.

If I'm making any money off it (or trying to), it's NOT Fair Use.

Fair Use can't be entertaining.

If I try to license material, I've given up my chance to use Fair Use.

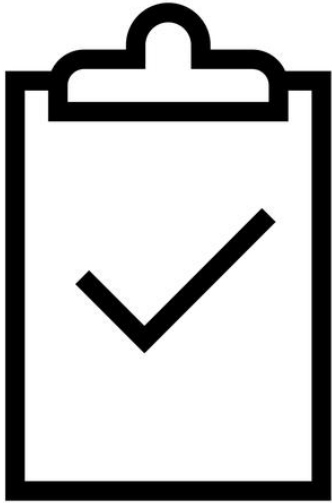
I really need a lawyer to make the call on Fair Use.

Any use for educational purposes is a Fair Use.





# A note about Codes of Best Practice



Recognition that Courts look to Communities of Practice when faced with a novel fair use case.

Image credit: <https://thenounproject.com/term/clipboard/28011/>, Aaron Dodson



# What about the TEACH Act?



In 2002, Congress passed the Technology, Education, and Copyright Harmonization (TEACH) Act to address copyright concerns in online distance learning and course management systems. Previously, copyright law strictly limited educators' ability to remain compliant in an online setting.

# What does it do?

The TEACH Act expands rights in the following ways:

- Transmission of performances of the entirety of a non-dramatic literary or musical work
- Transmission of reasonable and limited portions of any other performance
- Transmission of any work in amounts comparable to typical face-to-face displays

The TEACH Act envisions a model of online education analogous to in-classroom education -- lessons of limited duration that aren't repeated.



# Does it apply to us?



In order to be TEACH Act compliant, there is a formidable list of conditions that must be met by the educational institution.

*Image credit: <https://thenounproject.com/term/gate/7288/>, Matt Beynon*



# What about the DMCA?

The Digital Millennium Copyright Act criminalizes the circumvention of digital rights management safeguards in copyrighted material. You can't break a lock in order to copy, even if no other copyright infringement is intended.

[http://en.wikipedia.org/wiki/Digital\\_Millennium\\_Copyright\\_Act](http://en.wikipedia.org/wiki/Digital_Millennium_Copyright_Act)



# So no Fair Use for locked material?

Librarian of Congress can make exemptions to the DMCA every 3 years.

2012: You can copy protected DVDs (or other film works) for the purposes of remix, comment, critique, or the generally accepted Educational fair use provisions.

These exemptions have to be renewed every 3 years!



**Let's consider videos,  
illustrations, and photographs in  
light of the above.**



# In the face-to-face classroom...



...have a ball. As long as the use is germane to the curriculum, fair use applies. Don't distribute indiscriminately over the internet (but fair use applies).

Image credit: <https://thenounproject.com/term/children/11573/>, Gilad Fried





# Video

Online Best Practice: Fair use:

- Commenting or critiquing
- Using for illustration or example
- Capturing incidentally
- Memorializing, preserving or rescuing an event or cultural phenomenon
- Launching a discussion
- Combining to make a new work dependant on the juxtaposition of two or more old works

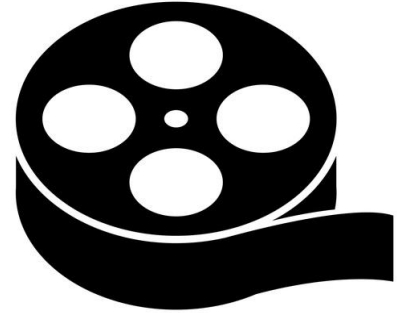


Image credit: <https://thenounproject.com/term/film/5398/>, Joe Mortell



# Practical Examples



# Video

Link and embed -- if you avoid copying, you avoid liability

TEACH Act provides some respite from liability -- if the institution complies

Q: How much of a video can you digitize and stream? A: Consider all four factors of Fair Use.



# Video

You can do anything you get permission to do.

If you don't have permission:

You can show video in a face-to-face educational environment.

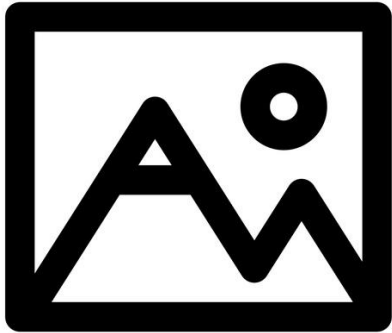
**You can rely on Fair Use** to incorporate parts of video(s) in new video.

You can show video online:

- if you purchase rights **or make fair use case**
- your institution is TEACH Act compliant



# Photographs & Illustrations



More difficult to define with regard to fair use because fair use usually precludes the use of an entire work.

First Factor burden of proof is on the plaintiff.

Image credit: <https://thenounproject.com/term/image/85756/> Garrett Knoll



# Photographs vs. Illustrations

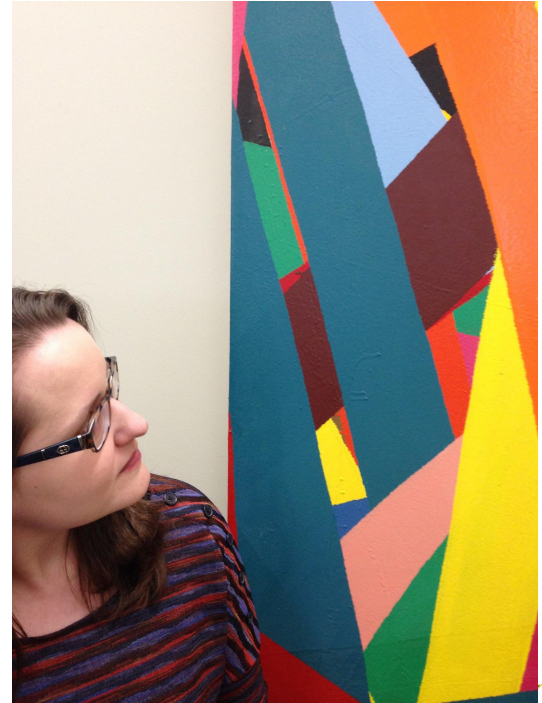
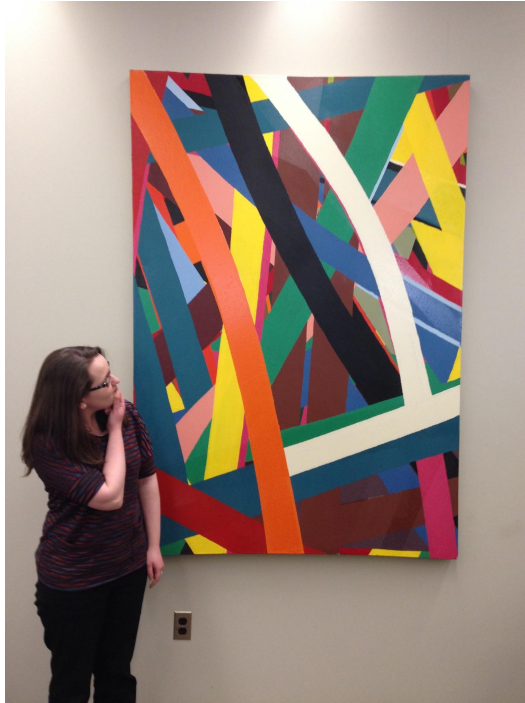
You can take a photograph of a copyrighted work.

An illustration of the Eiffel Tower is likely copyrightable. An argument could be made that a photograph of the Eiffel Tower is not copyrightable, as it's ubiquitous and potentially not "creative". Case law says that exact images of public domain works are not protected by copyright.

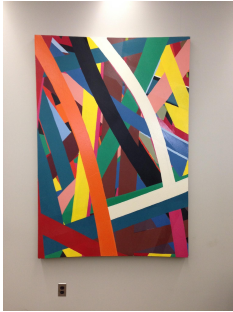
What this illustrates is that aside from fair use, the other claim you can make to use of material is that the material itself is not subject to copyright.



# Practical Example



# Practical Example



Resolution  
or Quality



Critique or  
Commentary



# Photographs & Illustrations

You can do anything you can get permission to do.

If you don't have permission:

- You can use it in a face-to-face educational environment. Otherwise,
- **You have to be able to apply fair use.**
  - Resolution or size
  - Amount of the image
  - **Transformative work**



# The Takeaway

Face-to-face educational use: Go for it.

Online: Employ thoughtful fair use.



# Resources

Copyright Friendly Sources for Images and Video: <http://bushlibraryguides.hamline.edu/c.php?g=23714&p=141368>

Fair Use Checklist

<http://copyright.wayne.edu/checklist.php>



# Thank you. Questions welcome.

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Available at <http://digitalcommons.wayne.edu/libsp/97>

scholarscooperative

