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# Boston University CAS Writing Program

## Copyright: Yours and Others'

### A Guide for Faculty

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#### WHY WRITING STUDENTS AND WRITING INSTRUCTORS NEED TO UNDERSTAND COPYRIGHT

All of us are consumers, producers, and, more generally, users of information, ideas, and the works in which they are presented. Sometimes information and ideas can be separated from the works in which we find them. For example, numerical values can be extracted from a table and re-presented or re-mediated into any number of forms, from sentences to infographics. Sometimes, however, information and ideas are impossible to separate from the works in which they're embodied. Consider a movie: its ideas and information are woven into a constantly changing matrix of image and sound. Or consider the challenge of discussing the ideas in a poem without quoting it.

In a strict, legal sense, copyright is concerned not with information and ideas, but with *fixed expressions* of them: in other words, it's concerned with *texts*. However, if information and ideas are frequently hard to disentangle from the forms in which they are presented, then by default matters of copyright are bound up with matters of learning, scholarship, free speech, and personal identity and expression. Thus, copyright overlaps with central, traditional concerns of college writing programs.

Nevertheless, it has been easy for writing programs to ignore copyright—until recently. Over the past thirty years, copyright has acquired new importance. The digital communications revolution has made it easier to access and use the works of others, as well as to share one's own texts with (potentially) anyone in the world. Simultaneously, it has undermined and democratized old systems of publication. In response, governments have established new laws. In the US, these include the [Digital Millennium Copyright Act](#) and the [Sonny Bono Copyright Term Extension Act](#), laws written at the behest of a small number of extremely large and powerful corporate interests, extending the duration and application of corporate rights and making it easier to prosecute and intimidate alleged violators. Meanwhile, copyright misinformation has proliferated, further diminishing the exercise of vital personal, scholarly, and civic rights.<sup>1</sup> Unwittingly, teachers often spread misinformation. Indeed, failure to address copyright in the writing classroom may, in effect, signal to students that it's too arcane, that we're all petty media pirates, that certain constitutional rights and responsibilities don't exist, that copyright is irrelevant to academia, or that the traditional writing and multimodal composition done in writing courses doesn't qualify as real work deserving of a real audience and, accordingly, can be shielded in a password-protected bubble.<sup>2</sup>

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<sup>1</sup> For an overview of misleading guidelines, see Renee Hobbs, Katie Donnelly, and Sandra Braman, "Teaching about Copyright and Fair Use for Media Literacy Education," Temple University Media Education Lab, [https://mediaeducationlab.com/sites/default/files/TEACHING%2520ABOUT%2520COPYRIGHT%2520AND%2520FAIR%2520USE%2520final\\_1.pdf](https://mediaeducationlab.com/sites/default/files/TEACHING%2520ABOUT%2520COPYRIGHT%2520AND%2520FAIR%2520USE%2520final_1.pdf)

<sup>2</sup> Renee Hobbs, *Copyright Clarity: How Fair Use Supports Digital Learning* (Thousand Oaks: SAGE Publications, 2010) 20-24. <http://ebookcentral.proquest.com/lib/bu/detail.action?docID=996251>.

In the midst of an era of technological, social, and legal change, copyright affects us as teachers, students, scholars, artists, citizens, consumers, producers, and private individuals. If we don't know basic information about the history, the stakes, and the terms of the debate, we surrender an unknown degree of freedom and responsibility, including, but not limited to, our professional responsibility to educate students in information literacy.<sup>3</sup>

The good news is this: a little history, combined with a handful of legal principles applied to a few real-life cases, can be enlightening and empowering.

## IN GENERAL: WHAT COPYRIGHT IS AND ISN'T

Copyright is an aspect of intellectual property (IP) concerning the use and distribution of original works of expression. It's distinct from some areas of IP, such as patent (which concerns inventions) and trademark (which concerns the identities of companies). It overlaps with other areas of IP, such as cultural rights and academic honesty. The distinction between academic honesty and copyright is particularly relevant to the writing classroom and is illustrated by the following table.

Table 1: Academic Honesty vs. Copyright

	Governing Realm	What Is Protected	What Isn't Protected	How to Respect the Rules
Academic Honesty	academic communities such as BU	distinctive wording and ideas	1) generic wording 2) well-known facts and ideas	by clear citation/attribution
Copyright	legal communities <sup>4</sup> , such as individual nations & groups of nations that enter into mutual agreements	any form of expression that 1) is fixed in its form <u>AND</u> 2) exhibits a small degree of originality <u>AND</u> 3) is the result of some creative effort	1) unoriginal works (e.g., phone books) 2) facts 3) ideas	1) by purchasing a license from the copyright holder <u>OR</u> 2) by requesting and receiving permission from the copyright holder to use the work <u>OR</u> 3) by using the work in accordance with fair use

Information and ideas, no matter how original or valuable, no matter how much sweat of the brow went into their production, are *not* protected by copyright law. Rather, the law concerns specific expressions of information or ideas: i.e., information and/or ideas expressed in specific pieces of writing, images,

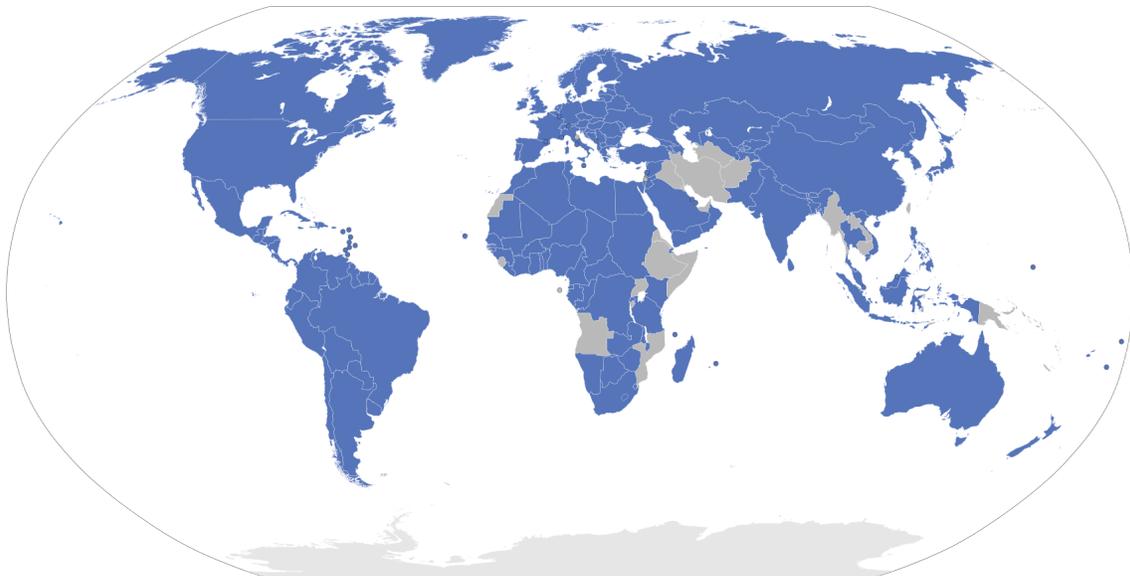
<sup>3</sup> As discussed later in this guide, engagement with copyright is an ideal way for first-year writing students to learn key areas of information literacy, as defined by the Association of College and Research Libraries.

<sup>4</sup> While sub-national organizations such as universities may have copyright policies, they're subject to national law.

music, software, architecture, etc. In order to qualify for protection, these expressions must (1) be fixed in form by some sort of stable medium (printed page, canvas, magnetic tape, digital file, stone, etc.) and (2) possess a small degree of creativity and originality. An alphabetical list of names does not meet the creativity threshold.<sup>5</sup> However, any student essay and any poorly drawn cartoon on a paper napkin does. Though copyright accrues automatically to the creator of a qualifying work, with no need of a label being affixed to the work or of the work being registered with a government office, copyrights can be transferred and sold. Therefore, the holder of the rights to a work may not be the creator of the work, and rights may be held by more than one party (as is often the case with musical recordings).

Though copyright laws vary from nation to nation, the criteria described above mostly apply to most countries.<sup>6</sup> As illustrated by Figure 1, most nations are signatories of the [Berne Convention](#), which establishes international standards and also mediates conflicts between laws of different nations.

Figure 1: The Nations of the Berne Convention<sup>7</sup>



## Copyright Protections in the United States

[Section 106 of Title 17](#) of the Code of Laws of the United States specifies the rights of copyright holders, which can be summarized as follows:

- The right to reproduce the work
- The right to create derivative works
- The right to distribute copies of the work
- The right to publicly perform or display the work

<sup>5</sup> See [Feist Publications, Inc. v. Rural Telephone Service Co. \(1991\)](#)

<sup>6</sup> The main exception is fair use. Though the Berne Convention does contain [language about fair use](#), the consensus of legal scholars is that the doctrine of fair use in the US is broader than in other nations.

<sup>7</sup> Wikipedia user Conscious, "Berne Convention signatories," 2009, SVG file, 940 x 477 px, Wikimedia Commons, [https://commons.wikimedia.org/wiki/File:Berne\\_Convention\\_signatories.svg#metadata](https://commons.wikimedia.org/wiki/File:Berne_Convention_signatories.svg#metadata). [CC BY-SA 3.0](#).

As already mentioned, these rights accrue *automatically* to any fixed expression that satisfies the minimal creativity requirement, regardless of whether the work is published or registered with the US Copyright Office, and these rights are exclusive to the creator unless and until the creator conveys them to another person or entity (such as a publisher).<sup>8</sup>

## The Purpose of the Law, and a Bit of History

Given the protections the law grants, the purpose of copyright may seem clear. Along with the editors of *Britannica Academic*, one might conclude that US copyright law is “designed primarily to protect an artist, a publisher, or another owner against specific unauthorized uses of his work...”<sup>9</sup> Among college students and the general public, this is probably the most commonly held view.

However, according to [section 8 of Article 1](#) of the United States Constitution, the purpose is “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.” The original [Copyright Act of 1790](#) is very much in this spirit, judging by the first part of its title: “An Act for the encouragement of learning.”

These conflicting attitudes about the purpose of copyright represent the basic forces that have shaped it since its origins in the West—specifically, in 17<sup>th</sup>-century England. In the late 1400s, when printing arrived in England, no laws governed the mass production of texts. However, in 1557 the Stationers’ Company, a printers’ guild, was granted exclusive right to regulate presses throughout the country: for the majority of authors, it became impossible to publish except by selling their rights to a member of the guild.<sup>10</sup> In 1662, this economic monopoly became an instrument of censorship as Parliament passed the Licensing of the Press Act<sup>11</sup>, which strengthened the hand of the Stationers Company.<sup>12</sup> Although at first the copyright for a work had been understood to last the lifetime of its owner, by 1700 it was understood to be perpetual.<sup>13</sup> However, the Licensing of the Press Act was controversial, and in 1710 it was superseded by the Statute of Anne, which shifted some power from publishers to authors. Most significantly, it capped the term of copyright at twenty-eight years. Through the Statute of Anne, Parliament recognized “a portable legal right in texts which vested initially in their creators, while acknowledging the existence of a ‘public interest’ in access to information.”<sup>14</sup>

United States copyright law is closely modeled on the Statute of Anne. In fact, US law has been described as the Statute’s chief inheritor:

[A]lthough U.S. copyright always has had many features in common with the analogous laws of other countries, it also has maintained a somewhat distinct identity, not least where thinking about

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<sup>8</sup> Similar rights are accorded by the laws of most other countries and by international law, as described in this [summary of the Berne Convention](#).

<sup>9</sup> Britannica Academic, s.v. “Copyright,” accessed February 9, 2019, <https://academic-eb-com.ezproxy.bu.edu/levels/collegiate/article/copyright/26218>.

<sup>10</sup> Ian Gadd, “The Stationers’ Company in England before 1710,” in *Research Handbook on the History of Copyright Law*, eds. Isabella Alexander and H. Tomas Gomex-Arostegui (Cheltenham, UK: Edward Elgar Publishing, 2016), 88. doi: <https://doi-org.ezproxy.bu.edu/10.4337/9781783472406.00011>

<sup>11</sup> The goal of censorship is clearly conveyed by its full title: “An Act for preventing the frequent Abuses in printing seditious treasonable and unlicensed Books and Pamphlets and for regulating of Printing and Printing Presses.”

<sup>12</sup> Karen Nipps, “Cum Privilegio: Licensing of the Press Act of 1662,” *Library Quarterly* 84, no. 4 (October 2014): 494–500. <https://doi.org/10.1086/677787>.

<sup>13</sup> Gadd, “The Stationers’ Company in England,” 89.

<sup>14</sup> Peter Jaszi, Craig Joyce, Marshall Leaffer, and Tyler Ochoa, “Statute of Anne: Today and Tomorrow,” *Houston Law Review* 47, no. 4 (2010): 1013-14. <https://heinonline-org.ezproxy.bu.edu/HOL/P?h=hein.journals/hulr47&i=1033>.

goals and purposes is concerned. Like all laws of literary and artistic property, ours has been affected by a deep-seated vision of inherent authorial entitlement. Unlike most other national laws, however, U.S. copyright has not developed primarily from a discourse dominated by that vision. Instead, the discussion of copyright policy in the United States has been characterized largely, at least for most of its history, by a shared rhetoric of public purpose.<sup>15</sup>

These competing forces of private interest and public interest have characterized copyright history in the US, as illustrated by a timeline of some of the most notable developments during the past 230 years.

### Highlights from US Copyright History<sup>16</sup>

*1789 – US Constitution grants congress power to legislate about copyright to “promote the Progress of Science and useful Arts.”*

*1790 – Congress passes the first US Copyright Act. Upon registering a text, the author is granted exclusive rights to publish for 14 years, with the option to renew copyright an additional 14 years.*

*1831 – The term of copyright is extended to a maximum of 42 years.*

*1909 – The term of copyright is extended to a maximum of 56 years and broadened to include all works, such as music.*

*1962-1976 – Incrementally, the term of copyright is extended to a maximum of 75 years.*

*1978 – Copyright Act of 1976 enacted; copyright becomes automatic, is extended to unpublished works, and the Doctrine of Fair Use is codified as law.*

*1988 – The US enters the Berne Convention (1886) and extends copyright automatically to works without notices attached to them.*

*1992 – Renewal of copyright becomes automatic (the maximum extension of copyright becomes automatic).*

*1998 – For individual authors, copyright is extended to lifetime of author plus 70 years; for corporate authors, copyright is extended to 120 years from creation or 95 years from publication (applies to all works currently under copyright at time of legislation); circumventing digital rights management software becomes a felony; infringement penalties increased to \$1,000,000 and ten years imprisonment.*

As we can see, over the past two-hundred-plus years, widespread adoption of new communication technologies (radio and phonograph records early in the twentieth century, the internet in the 1990s) have prompted significant changes in the law, and—especially in recent decades—copyright protections have expanded in scope and duration, while penalties for infringement have also increased. Based on this history, some legal scholars question how much weight should be given to the law’s public-interest

<sup>15</sup> Jaszi et al., “Statute of Anne: Today and Tomorrow”: 1015.

<sup>16</sup> “Copyright Timeline: A History of Copyright in the United States,” Association of Research Libraries, Accessed February 10, 2019, <https://www.arl.org/copyright-timeline/>.

origins in the Statute of Anne. For example, [Barbara Lauriat](#) writes, “[I]t is not entirely clear how much weight the veiled intentions of legislators drafting the first copyright statute or the United States Constitution should have in terms of informing our contemporary understanding of the justification(s) for the legal regime.”<sup>17</sup> Others, such as [Peter Jaszi](#), sound an alarm: “In the United States at least, where the basic framework of law laid down by the Statute of Anne has persisted the longest, the story of copyright now has entered a new era—one in which this body of law is being remade more radically and more rapidly than at any other point in its history.”<sup>18</sup>

## LEGAL USES OF WORKS CREATED BY OTHERS

Although US copyright law does guarantee four basic rights to copyright holders, thus restricting uses of protected works, there are four conditions under which anyone may legally reproduce, distribute, publicly perform, and create derivatives of works created by others.

### Legal Use #1: Texts from the Public Domain

A simple way of legally using texts created by others is to use work that isn’t protected because it’s in the public domain: no one owns it or everyone owns it, depending on your view. For decades, everything published in the US before 1923 was in the public domain. In 1998, this line in time was frozen by the Sonny Bono Act, which added twenty years to the term. However, on January 1, 2019, virtually all previously protected works published in 1923 entered the public domain. In January, 2020, virtually all previously protected works published in 1924 will enter the public domain. Barring additional legislation, previously protected works will continue to enter the public domain on an annual basis.

Many works published *after* this moving demarcation are also in the public domain. However, this is where determining copyright status gets complex. The [Stanford Copyright and Fair Use site](#) and the [Cornell Copyright Information Center](#) both provide good starting points for investigating which works are in the public domain.

Finally, a number of works *begin* life in the public domain, either because they were created by employees of the federal government or because their creators waived their rights (see section on Creative Commons, below). However, note that some works created for the federal government by contract workers may not be in the public domain, and works created by employees of most state governments are not in the public domain.

### Legal Use #2: Creative Commons Works

In 2001, the nonprofit organization [Creative Commons](#) was founded by [Lawrence Lessig](#) and a group of other lawyers, computer scientists, filmmakers, and internet entrepreneurs, with the mission of “develop[ing], support[ing], and steward[ing] legal and technical infrastructure that maximizes digital creativity, sharing, and innovation.”<sup>19</sup> Creative Commons is best known for its licenses, which are [legally enforceable](#), but available in a form easily comprehensible by non-lawyers. These licenses allow creators

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<sup>17</sup> Barbara Lauriat, “Copyright History in the Advocate’s Arsenal,” in *Research Handbook on the History of Copyright Law*, eds. Isabella Alexander and H. Tomas Gomex-Arostegui (Cheltenham, UK: Edward Elgar Publishing, 2016), 24-25. doi: <https://doi-org.ezproxy.bu.edu/10.4337/9781783472406.00007>.

<sup>18</sup> Jaszi et al., “Statue of Anne: Today and Tomorrow”: 1014.

<sup>19</sup> Creative Commons, “Mission and Vision,” accessed February 19, 2019, <https://creativecommons.org/about/mission-and-vision/>.

to waive all or some rights in order to foster a culture of sharing. The least restrictive CC license releases work directly to the public domain. The most restrictive requires that users credit the creator and prohibits commercial uses and any modifications to the work.

Searching online for CC-licensed material is easy. Creative Commons has created a [useful search tool](#) that links to a dozen different databases. One can also go directly to a database or search engine and adjust the settings as necessary to retrieve only media labeled for reuse. For example, in Google one can select “Settings,” then “Advanced Search,” and then filter searches according to usage rights.

Applying a CC license to one’s own work is just as easy. Creative Commons [scaffolds the process](#) for choosing a license. One simply needs to label the work with the license (see, for example, the footer of this document).

### Legal Use #3: Getting a License or Asking Permission

Material protected by copyright may come with its own specific license for reuse. For example, major online publications typically have a permissions page stating conditions for reuse. In those cases, one should abide by the stated terms (unless one can make a case for Fair Use—see Legal Use #4, below). But because US law doesn’t require a copyright label to be affixed to a work, always assume that full copyright applies unless clear evidence indicates otherwise.

Obtaining permission to use copyright-protected work can be frustrating, especially when dealing with corporate copyright holders, such as publishers, artist’s estates, and movie studios. However, individual authors—for example, BU faculty and students—who own their own rights (remember, copyright accrues automatically and instantly to every author of a qualifying work) may very well reply to and accommodate permissions requests. For a collection of sample requests, see the [Getting Permission page](#) created by NYU Scholarly Communications Librarian April Hathcock. Another good starting point for understanding the permissions process is the [Stanford Copyright and Fair Use site](#).

### Legal Use #4: Fair Use

Fair use is where things get interesting. In 1976, The Fair Use Doctrine was added to the US Code as [Section 107](#), which states that “the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.” In other words, under certain circumstances anyone may legally reuse or appropriate work that is fully protected, without the copyright holder’s authorization and regardless of whether the holder approves the use. In fact, asking for permission to reuse a work and having the copyright holder deny permission in no way affects fair use rights.

The criteria for fair use, known as the four factors, are easily understood and memorized. What makes fair use interesting is that these terms are inherently vague.

Table 2: The Four Factors of Fair Use

	Weighs in favor of Fair Use	Weighs against Fair Use
Purpose and nature of your use	non-profit or educational; transformative	for-profit; merely illustrative
Nature of the protected work	less creative (e.g., non-fiction); published	more creative (e.g., fiction); unpublished
Amount of protected work used	a little, or only as much as needed for the stated purpose	a lot, the heart of the work, or more than needed for the stated purpose
Market effect on protected work	no negative impact	negative impact

Myths about fair use abound—for example, that you may use up to ten percent of a work, or twenty seconds of a song, or some other guideline more exact than “only as much as you need for your purpose.” However, using only as much as needed, as vague as that may be, is in fact one of the terms of this doctrine (if not the exact wording). That’s why fair use cases, when contested, may need to be settled in court.

Historically, the purpose and nature of your use (the first factor) and the market effect on a protected work (the fourth factor) have been given greatest weight. While the concept of market effect is clear-cut, the first criterion warrants further explanation, particularly with respect to transformativeness.

A truly transformative use has a different purpose than the protected work had or has for the original author. A use that isn’t transformative has a similar purpose. For example, the purpose of the 2014 documentary film *Fed Up* is to expose and critique an industry that promotes the consumption of sugary foods at the expense of public health. If you wanted to create a brief public service video identifying unhealthy eating habits, you might be tempted to use clips from the film to make your point. However, your use of the clips would probably *not* qualify as fair use because your purpose would probably be too similar to the purpose of the work you wanted to borrow from.<sup>20</sup> If, instead, you were conducting a rhetorical analysis of the visual design of *Fed Up*—in other words, if you were making an argument not about sugar or public health, but about one of the ways the movie *Fed Up* seeks to persuade its audience—then your use of clips from *Fed Up* likely *would* qualify as fair use, at least according to the first factor.

Specific, real-life considerations of the first factor can further clarify the matter. Harvard Copyright Advisor Kyle Courtney and cartoonist Sarah Searle have created clear, concise, accurate, and entertaining summaries of two of the more influential cases that have hinged in part on the question of transformativeness: [Campbell v. Acuff Rose \(1993\)](#) and [Bill Graham Archives v. Dorling Kindersley \(2006\)](#).

<sup>20</sup> That said, it’s impossible to perform a rigorous fair use analysis of a purely hypothetical use.

Although factors one and four have been given the greatest weight in court decisions, no simple formula determines whether a use is fair. Fair use does not depend on satisfying two or three of the four criteria, and even for-profit uses may be (and sometimes have been ruled to be) fair, as illustrated by the resolution of one of the cases mentioned above.<sup>21</sup> The best way to develop a grasp of fair use is to look at material from actual court cases—that is, to examine the specific copyright protected work, the specific reuse, and the findings of the court(s). The [U.S. Copyright Office Fair Use Index](#) is a user-friendly database of important cases and a useful starting point for thinking about fair use in concrete detail. A similar resource is contained in the publicly accessible Zotero library described at the end of this guide.

All of that said, very few fair use disputes go to court. Typically, too little is at stake, or one of the parties lacks the financial wherewithal to litigate.

## Workflows for Finding Works for Reuse

There are different workflows for finding works that one can legally reuse. NYU librarian April Hathcock recommends [a process that prioritizes getting permission](#). However, obtaining permissions can be more than challenging: in the words of Susan Bielstein, Executive Editor for the University of Chicago Press, it's like "having to jump through endless tiny hoops of fire."<sup>22</sup> I would add that, in addition to being arduous, a workflow that emphasizes permissions plays into the popular misconception that copyright is primarily (or solely) as matter of private ownership, rather than public good.

Instead, I recommend an approach that emphasizes both students' convenience and their constitutional freedom of reuse. The latter point of emphasis—essentially, a legally grounded position of resistance—is shared by former CCC Committee on Intellectual Property Chair John Logie, who, in his *Peers, Pirates, and Persuasion*, says the following about the borrowed visual media that he reused in that book: "While I have done my best to identify and acknowledge the copyright holders for these images, I have determined not to seek permissions for these obviously fair uses."<sup>23</sup> The following workflow aligns with Logie's stance:<sup>24</sup>

- Begin by looking for work that you're free to reuse in the manner you want to use it. For example, if you know you want to modify your media assets, begin your online search by adjusting search engine settings to return only media labeled for reuse and modification.

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<sup>21</sup> Specifically, *Bill Graham Archives v. Dorling Kindersley* (2006). Although *Campbell v. Acuff-Rose* (1993) set a precedent in favor of fair use, the case was remanded from the Supreme Court back to Federal Appeals Court, and eventually settled out of court.

<sup>22</sup> Susan Bielstein, *Permissions, A Survival Guide: Blunt Talk about Art as Intellectual Property* (Chicago, University of Chicago Press, 2006), quoted in Steve Westbrook, "A Refrain of Costly Fires: Visual Rhetoric, Writing Pedagogy, and Copyright Law," in *Composition and Copyright: Perspectives on Teaching, Text-Making, and Fair Use*, ed. Steve Westbrook (Fort Collins, CO: Parlor Press, 2009), 94.

<https://ebookcentral.proquest.com/lib/bu/reader.action?docID=3408133>.

<sup>23</sup> John Logie, *Peers, Pirates, and Persuasion: Rhetoric in the Peer-to-Peer Debates* (Fort Collins, CO: Parlor Press, 2006) quoted in Westbrook, "A Refrain of Costly Fires," 111.

<sup>24</sup> Unlike Logie, or any author of a published book, the chances of our students being challenged on their reuse of someone else's work are exceedingly slim. According to Martine Courant Rife, "the risk of litigation for educators is low if not nonexistent." And in the unlikely event that one receives a take-down notice from Walt Disney, one can comply in order to avoid legal entanglements. Martine Courant Rife, "Ideas toward a Fair Use Heuristic: Visual Rhetoric and Composition," in *Composition and Copyright: Perspectives on Teaching, Text-Making, and Fair Use*, ed. Steve Westbrook (Fort Collins, CO: Parlor Press, 2009), 136-37.

<https://ebookcentral.proquest.com/lib/bu/reader.action?docID=3408133>.

- If you can't find public domain or CC-licensed media that suits your needs, only then should you consider media that appears to be copyright protected.
- If the work is copyright protected, conduct your own fair use analysis. If you believe your use is fair, make some sort of record of your analysis (e.g., a note on a Word doc or an email to yourself) so you can refer to it if anyone questions the legality of your use.
- If you conclude fair use probably would *not* apply to your intended use, but you still wish to use the work, only then seek out the copyright holder and request permission, with the understanding that you may not receive permission or even a response in time to complete your project—and that you may therefore need to find a substitute work—or create your own.

## CLASSROOM USE OF COPYRIGHT-PROTECTED WORKS: THE TEACH ACT

The preceding discussions of public domain, CC licenses, traditional licensing and permissions, and fair use all have to do with public uses of works created by others. For uses limited to teaching contexts at non-profit educational institutions the [Technology, Education, and Copyright Harmonization Act](#) (TEACH Act) provides additional exemptions. For many years, the TEACH Act has applied to face-to-face classroom contexts. For example, it permits instructors to display entire works and any work (e.g., a movie) during class. However, in 2002 this act was revised, expanding educators' ability to share course materials with students. Previously, electronic media did not fall under the exemptions described in Section 110 of the Copyright Act. With the revision of the act, instructors are permitted to post many copyrighted materials (such as brief film clips and PDFs of journal articles and book chapters) online, with the following general requirements:

- that the material be truly related to course content
- that the material be labeled as copyright protected
- that the site be password protected and thus restricted to registered students
- and that the material be posted for a limited duration.

Generally speaking, a better practice is to create links to works (e.g., to the university library database), rather than to host files on the course site. Also, the TEACH Act does not permit an instructor to host entire long works (such as full-length movies) on a course site. For more detailed information, see [the law itself](#) or a [summary](#) provided by Cornell University's Copyright Information Center.

## FACULTY AND STUDENT RIGHTS: AUTHORSHIP IN AN ACADEMIA

Within institutions of higher education, determining authorship can be a complicated matter. When are faculty members considered authors in their own right? When are they considered agents for a principle—that is, agents engaged in work for hire for the institution that employs them? What rights do students have to works they create for a grade in a course? What rights and responsibilities do faculty have when it comes to copyright-protected student works? How concerned should students and faculty be by end-user agreements encountered and agreed to throughout the semester on applications such as Blackboard, Digication, and Turnitin?

Although these questions are not addressed in the current version of this guide, they are nevertheless relevant to faculty and students alike, and the last of those questions could be a particularly interesting topic for discussion with students in a writing course.

## TEACHING COPYRIGHT AND FAIR USE

In “Beyond the Wake-Up Call: Learning What Students Know about Copyright,” DePaul University’s Lisa Dush does a good job of summarizing the challenges of teaching copyright and fair use within a writing course:

[A]s any teacher of multimodal composition will attest, the how of dealing with copyright is more problematic than the why. Time is always a constraint in writing classrooms, but the logistics of digital writing seem to leave even less of it for discussions about complicated issues like copyright. And while all academic institutions have some sort of official plagiarism policy, which teachers of print composition can adopt or build upon, dealing with copyright is generally a matter of inventing policy. In the face of these constraints, it is not uncommon for even the most thoughtful of teachers to simply issue their students a blanket prohibition, perhaps highly qualified, on using copyrighted texts.<sup>25</sup>

Unfortunately, textbooks on writing offer little help with this challenge. In a 2009 survey of eight leading composition handbooks, [Steve Westbrook](#) notes “the absence of a significant conversation on copyright” in a single one.<sup>26</sup> Ten years later, considering what are, in my opinion, the two best *multimodal* composition handbooks available, I would describe one text’s discussion of copyright as inadequate,<sup>27</sup> the other’s as non-existent.<sup>28</sup> Nevertheless, as Westbrook argues, “if we aim to treat the writers in our classrooms at all professionally [ . . . ] we should assume that their new media texts might, in fact, be designed to reach publication venues outside of the academy; if we take this prospect at all seriously, we need to initiate conversations about permissions, copyright law, and intellectual property.”<sup>29</sup>

Moreover, we should keep in mind the role copyright plays in contemporary information literacy, as described by the Association of College and Research Libraries in its [Framework for Information Literacy for Higher Education](#). Within one of the six frames, [Information Has Value](#), every one of the knowledge practices and dispositions at a minimum intersects with issues of copyright. It’s hard to imagine how students can progress within this area of information literacy without spending at least some time reading about, debating, applying, and perhaps sometimes consciously defying standards of copyright.

*In sum, our conversations about teaching copyright must advance from “whether” and “what” to “how.”*

A simple way of making sure students don’t violate copyright is to skip over legal, historical, and theoretical contexts and just steer students toward sources that can be legally reused, such as the sources described in the sections of this guide titled Legal Use #1 and Legal Use #2. One problem with this approach, however, is that it does nothing to develop critical thinking. As the ACRL warns, “[t]he

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<sup>25</sup> Lisa Dush, “Beyond the Wake-Up Call: Learning What Students Know about Copyright,” in *Composition and Copyright: Perspectives on Teaching, Text-Making, and Fair Use*, ed. Steve Westbrook (Albany: State University of New York Press, 2009), 115. <https://ebookcentral.proquest.com/lib/bu/reader.action?docID=3408133>.

<sup>26</sup> Westbrook, “A Refrain of Costly Fires,” 101.

<sup>27</sup> Cheryl Ball, Jennifer Sheppard, and Kristin L. Arola, *Writer/Designer: A Guide to Making Multimodal Projects*, 2<sup>nd</sup> ed. (Boston: Bedford/St. Martin’s, 2018).

<sup>28</sup> Anne Frances Wysoki and Dennis A. Lynch, *Compose, Design, Advocate: A Rhetoric for Multimodal Composition*, 3<sup>rd</sup> ed. (New York: Pearson, 2018).

<sup>29</sup> Westbrook, “A Refrain of Costly Fires,” 106-7.

novice learner may struggle to understand the diverse values of information in an environment where [. . .] the concept of intellectual property is first encountered through rules of citation or warnings about plagiarism and copyright law.”<sup>30</sup> To *limit* students’ encounters with copyright to a set of prohibitions and work-arounds may reduce violations in coursework that semester; but it may be counterproductive as far as information literacy goals are concerned. A second problem with this approach is that it may ratify the false notion that, for students, copyright is a matter of other people’s rights, disregarding the fact that students themselves possess rights as potential and actual re-users and creators.

Taking my cue from Lisa Dush, I suggest that a better approach begins with giving students the chance to share their own practices, thoughts, and feelings in relation to copyright, thus initiating a dialogue. In all likelihood, students will offer up a mix of knowledge, misconceptions, and questions, along with feelings of indignation, embarrassment, and cynicism—all of which creates an excellent situation for reading and interrogating the concise language of the law itself. Taking the additional step of applying the doctrine of fair use to a couple of actual legal cases (without giving away the outcomes before students have had a chance to make their own rulings) can fuel a fun, lively, and ultimately eye-opening debate. At that point, students are prepared make at least somewhat informed assessments about the ethics and legality of their own reuses and their peers’ reuses of media in class projects, considering legality not narrowly, but in the broad manner the law requires. Is the use transformative? If so, to what end, and how? This is a rich opportunity for metacognition and peer review, generating valuable material for the revision process. Some exposure to a bit of history and recent debates about the topic, or perhaps some exposure to additional intellectual property issues (such as cultural rights), would be a bonus, allowing students to situate their practice within a broader and more challenging, but also more liberating context. Finally, the circle can be closed by requiring students to articulate how they wish to license specific creations of their own, from asserting full copyright to surrendering their work to the public domain, as well as to articulate the rationale for their choice. How do they feel about others using *their* work? What conditions, if any, do they wish to assert?

In the Appendix at the end of this guide, you’ll find an excerpt from a class schedule for a fifteen-week MWF section of WR 152, showing how this approach (or most of it) fit into a week-and-a-half stretch (the sixth and the beginning of the seventh weeks) of a particular course. However, the same activities could be less obtrusively (and probably more effectively) spread throughout the semester, and they don’t all have to be incorporated. Even with all of the material and activities described above, students won’t not come out of your writing course as experts in copyright and fair use—any more than they will come out expert academic or public writers. As with writing and information literacy in general, our goal is to introduce them to or deepen their engagement with knowledge, skills, and habits of mind that they will need to cultivate throughout their lives.

## ADDITIONAL INFORMATION AND RESOURCES

For an annotated bibliography of books, articles, websites, and comics about copyright and fair use, visit the publicly accessible Zotero group library created to accompany this guide: go to the [Zotero group search page](#) and enter “Copyright/Fair Use Resources for BU’s CAS Writing Program.” Next, click “Group Library.” Within this library you’ll find four collections: “Cases for In-Class Discussion,” “Conversation Starters to Share with Students,” “Organizations Advocating for Less Restrictive Copyright Law,” and “Resources for Faculty and Outreach Librarians” (which contains nine sub-collections).

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<sup>30</sup> “Framework for Information Literacy for Higher Education,” Association of College and Research Libraries, Published January 11, 2016, <http://www.ala.org/acrl/standards/ilframework>.

## APPENDIX: EXCERPT FROM A CLASS SCHEDULE FOR WR 152

To understand the rationale behind this schedule, some context is required.

Prior to February 21, students have reviewed academic honesty and plagiarism, completed traditional written rhetorical analyses of documentary films on the course topic, storyboarded their own movie ideas, and peer-reviewed those storyboards.

During the portion of the schedule presented, students are in the midst of their second major assignment, creating brief movies that either (1) remediate a traditional (written or linguistic) rhetorical analysis essay that they've just finished writing on a documentary film or (2) respond to the argument made by that documentary film. Beside each class activity, bracketed numbers indicate how much time is needed for the activity. Annotations in the margins do not appear in the students' version of the schedule. Homework and reading during this stretch of the semester is light in order to provide students with enough unstructured out-of-class time to draft a short film of their own. That's partly why copyright/fair use is a good fit at this point in the semester: for undergraduates, developing a good working knowledge of copyright/fair use depends more on in-class discussion than on readings or homework assignments. Additionally, the focus on copyright is essential for helping students to think critically about the topic as they engage in a multimodal project that will almost certainly entail searching for, reusing, and modifying other people's video texts.

After the part of the course represented by the schedule, students revise their movie drafts. By the time they submit final versions of their movies, they're required to read the Creative Commons page "[About the Licenses](#)" and to decide how they wish to license their movies. Also, each finished movie must be accompanied by a document listing all media credits (including hyperlinked URLs for "borrowed" online media), as well as a written reflection that, among other things, explains whether and why the students believe they've borrowed media legally and how and why they chose to assert or not assert their own copyright.

Still later in the semester, while working on their third and final project (which in this particular section of 152 can be in any mode, medium, or genre), students revisit many of the same topics and activities—e.g., peer-reviewing the legality of borrowed media in their projects and choosing how to license their work.

In a different section of a WR 150-level course, it would probably make sense to take the same copyright/fair use material covered in this schedule excerpt and to distribute it over a longer time frame; and for a TTh class, with 75-minute sessions, the material could probably be arranged more logically.

TUESDAY, FEBRUARY 21

Assignment Due:

Revise and re-upload the storyboard for your movie

Spend no more than a half hour browsing some of the readings listed below and respond to the questionnaire about copyright-related issues

Reading Due (browse at least 6):

Jeremiah Rivera. "Friends Intro Harry Potter Edition HD."  
<https://www.youtube.com/watch?v=wjNqa5mnVUU>.

"Wizard People': The Underground 'Potter.'" NPR.org.  
<https://www.npr.org/templates/story/story.php?storyId=4582190>.

AdsNTrailers. Piracy Warning 2000's. <https://www.youtube.com/watch?v=0vXO98IcXRw>.

john kammerer. *The Cabinet of Dr. Caligari Rescore*.  
<https://www.youtube.com/watch?v=3KjX2MqD7IM>.

kinolorber. *The Cabinet of Dr. Caligari* (New 4D Restoration, Alternate Score DJ Spooky).  
<https://www.youtube.com/watch?list=UUtlPYzQ188v4gHQ5VyikNiw&v=T65GVHybYt8>.

— — —. *The Cabinet of Dr. Caligari* (New 4K Restoration Trailer).  
[https://www.youtube.com/watch?list=UUtlPYzQ188v4gHQ5VyikNiw&time\\_continue=1&v=7LG19w33okU](https://www.youtube.com/watch?list=UUtlPYzQ188v4gHQ5VyikNiw&time_continue=1&v=7LG19w33okU).

Movieclips Indie. *Downloaded* Official Trailer #1 (2013) - Technology Documentary HD.  
<https://www.youtube.com/watch?v=h7YnjPGleKY>.

Werde, Bill. "Defiant Downloads Rise from Underground." *The New York Times*, February 25, 2004, sec. Arts. <https://www.nytimes.com/2004/02/25/arts/defiant-downloads-rise-from-underground.html>.

"Grey Tuesday." Electronic Frontier Foundation, December 18, 2013.  
<https://www.eff.org/pages/grey-tuesday>.

DJ Danger Mouse - *The Grey Album*. <http://archive.org/details/DjDangerMouse-TheGreyAlbum>.

"Opsound: Free Love, Free Music." <http://www.opsound.org/index.php>.

"Prelinger Archives." Video Archive. <https://archive.org/details/prelinger>.

Class Work:

As class, discuss questionnaire results and copyright-related issues prompted by assigned readings [15]

Brief introduction to copyright and fair use, comparison of copyright with academic honesty [15-20]

As class, perform fair use analysis of media involved in actual legal case [10-15]

**Commented [PJ1]:**

The questions in the questionnaire concern students' knowledge about, relationship to, and feelings toward copyright, and they're based on the questionnaire in the appendix of the following article:

Dush, Lisa. "Beyond the Wake-Up Call: Learning What Students Know about Copyright." In *Composition and Copyright: Perspectives on Teaching, Text-Making, and Fair Use*, edited by Steve Westbrook, 235. Albany: State University of New York Press, 2009.  
<https://ebookcentral.proquest.com/lib/bu/reader.action?dclid=3408133>.

If the questionnaire is due the night before, you should be able to make the anonymized results available the students at the beginning of class. Alternatively, responses could be posted to a discussion board. However, making responses public might limit the honesty of student responses.

**Commented [PJ2]:** For bibliography of additional texts that can serve as copyright conversation starters for students, see the Zotero group library I created on this topic: go to the [Zotero group search page](#) and enter "Copyright/Fair Use Resources for BU's CAS Writing Program." Next, click "Group Library." Within this Library, you will find four collections, one of which is "Conversation Starters to Share with Students."

**Commented [PJ3]:** In my experience, students are at first slightly hesitant to discuss their attitudes toward and practices regarding copyright-protected material. But after a few moments, they seem eager, forthright, and thoughtful.

**Commented [PJ4]:** The previous activity leads into this one. Some of what students have said about copyright in the discussion will probably be correct, some in need of correction. The transition could be made by sharing Article 1 section 8 of the US Constitution and asking what, according to the Constitution, the purpose of copyright is. Students will likely be surprised it's to balance private rights and the common good.

On the board, the instructor can recreate something like the copyright-plagiarism comparison table included in this guide, filling in the blanks by relying on student knowledge of plagiarism and, as much as possible, their knowledge of copyright. Again relying on student knowledge as much as possible, the instructor can also list the basic rights of copyright holders and the four factors of fair use (in my... [1])

**Commented [PJ5]:** Campbell v. Acuff Rose (1993) works well. It's important for the instructor to provide some minimal background: 2 Live Crew's permission request to cover a song by Roy Orbison was denied; they used Orbison's song anyway; and Orbison's publisher sued. Play a minute of each version of the song and project the parallel text of the lyrics from the two different version on the screen. Ask the entire class to perform a quick, off-the-cuff four-point fair use analysis and to rule as though they were the Federal or Supreme Court Judges who heard the case. [2]

WEDNESDAY, FEBRUARY 22

Reading Due:

- Highlights from ruling on Campbell v. Acuff Rose (1993)
- Information on US copyright law: Stim – "[Copyright Basics FAQ](#)"
- Information on Fair Use exception: Duranceau – "[A Window on Fair Use](#)"
- More information on Fair Use exception: Duranceau – "[Using Images: Copyright and Fair Use: Using Images](#)"
- Information on Creative Commons licenses: "[Wanna Work Together?](#)"
- Extremely useful tools for finding media that you can use with few or no legal worries: Duranceau – "[Using Images: Copyright and Fair Use: Identifying Images for Reuse](#)"

Class Work:

- Brief review and discussion of fair use and traditional copyright vs. CC licenses [10]
- As class, consider timeline of copyright history in England and US over past few hundred years [10]
- As class, perform fair use analysis of media involved in actual legal case [5-10]
- In pairs and as class, perform [copyright and fair use analysis](#) of Sample Movie 1 [20]

FRIDAY, FEBRUARY 24

Assignment Due:

- Perform [copyright and fair use analysis](#) of student movie Sample Movies 2 and 3

Reading Due:

- Courtney, Searle, and Roche – "Bill Graham Archives v. DK"

Class Work:

- As class, discuss [copyright and fair use analysis](#) of Samples 2 and 3 [15]
- Movie-making workshop [35]

MONDAY, FEBRUARY 27

Assignment Due:

- [Compose draft of movie](#) and upload to [shared Project 2 Drafts folder](#)

Class Work:

- As class, workshop volunteered draft, with attention to issues of copyright and fair use

Wednesday, March 1 – Friday, March 3: required group conferences with instructor

Assignment Due at Time of Conference:

- [Review two peer drafts, with attention to copyright and fair use](#)

- Commented [PJ6]:** This is a large number of readings, but they are all very brief, and most of them reiterate material from the previous day. Only the summary of Campbell v. Acuff Rose and the three-minute Creative Commons video add new information.
- Commented [PJ7]:** Since the students are engaged in making movies that almost certainly use at least some media assets found online, I provide them with this set of tools as soon as they begin creating actual video drafts of their movies—not as a crutch, but as a resource.
- Commented [PJ8]:** Two things I would emphasize here are the limited duration of copyright and the existence of the public domain – two things I would not have gotten to during the previous class, given the constraints of a 50-minute MWF schedule.
- Commented [PJ9]:** I project a timeline on the screen and/or hand out printed copies, then ask students what the timeline illustrates about how the application of the law has developed over time. In the US, protections for copyright holders have mushroomed, diverging from the apparent intent of the Article 1 section 8.
- Commented [PJ10]:** A good case to use is Bill Graham Archives v. Dorling Kindersley (2006). Again, the instructor will need to provide students with a minute's worth of background and then project the evidence on the screen. (It's important to project the evidence and have all student laptops closed so no one impulsively Google's the case and blurts out how it was resolved.) The entire activity, including discussion, should take about ten minutes.
- Commented [PJ11]:** In pairs, students watch a minute or so of a student movie from a previous semester. They're supplied with a Word doc listing all borrowed online media appearing in the movie clip, with URLs, as recorded by the student-creator of the clip. After they have had about ten minutes to vet the legality of the uses of the media assets, we regroup as a class and share our findings. Later in the week, for movie Samples 2 and 3, this activity is more or less repeated, but students do the first step of analysis on their own for homework.
- Commented [PJ12]:** This quick, graphic-novel-style text summarizes the logic behind the final court ruling on Bill Graham Archives v. Dorling Kindersley.

The previous activity leads into this one. Some of what students have said about copyright in the discussion will probably be correct, some in need of correction. The transition could be made by sharing Article 1 section 8 of the US Constitution and asking what, according to the Constitution, the purpose of copyright is. Students will likely be surprised it's to balance private rights and the common good.

On the board, the instructor can recreate something like the copyright-plagiarism comparison table included in this guide, filling in the blanks by relying on student knowledge of plagiarism and, as much as possible, their knowledge of copyright. Again relying on student knowledge as much as possible, the instructor can also list the basic rights of copyright holders and the four factors of fair use (in my experience, a few students usually have some knowledge of these topics as well).

Campbell v. Acuff Rose (1993) works well. It's important for the instructor to provide some minimal background: 2 Live Crew's permission request to cover a song by Roy Orbison was denied; they used Orbison's song anyway; and Orbison's publisher sued. Play a minute of each version of the song and project the parallel text of the lyrics from the two different versions on the screen. Ask the entire class to perform a quick, off-the-cuff four-point fair use analysis and to rule as though they were the Federal or Supreme Court Judges who heard the case. The majority of my students have always concluded (incorrectly) that the use was a copyright infringement.

The only problem with this case is that the lyrics of one or both versions of the song are rather offensive—though in my experience that's a source of enjoyment for the class.

For an instructor, an excellent summary and discussion of the case is provided by Lewis and Clark Law School professor Lydia Pallas Loren in her article "The Purpose of Copyright," published in *Open Spaces: Views from the Northwest*, <https://open-spaces.com/articles/the-purpose-of-copyright/>.

For bibliography of additional cases for discussion, along with relevant legal and scholarly documents, see the Zotero group library I created on this topic: go to the [Zotero group search page](#) and enter "Copyright/Fair Use Resources for BU's CAS Writing Program." Next, click "Group Library." Within this Library, you will find four collections, one of which is "Cases for In-Class Discussion."