

Copyright Essentials

Introduction

Copyright is both complex and confusing. Many people have questions about what can be used, as well as when, where, and how to use it, without violating copyright. Others have questions about their copyrights as an author or creator. And still, others need information on how and when to seek permission to use copyrighted material. This guide helps you answer those questions and more.

In this guide, you will find information on:

- fair use
- classroom use, both virtual and face to face
- seeking permission
- author/creator rights
- copyright and your thesis or dissertation
- downloading & file sharing
- copyright and libraries
- creative commons licenses, sort of copyright-light
- open, freely available resources
- getting help

Use the navigation tabs on the left to find more information for your copyright question or need. You will find helpful tools and guides listed under **Resources** for many of the sections

If you don't find what you are looking for, please contact us at lib-copyright@nmsu.edu Expect a response within 24 hours, Monday - Friday.

What Is Copyright?

In the United States, copyright is a federal law ([US Code Title 17](#)) that provides protection to creative and intellectual works as well as public access to those works. In fact, copyright is a component of the *United States Constitution*.

Located in the section discussing the roles and powers of Congress, [Article I Section 8](#) states that "*[t]he Congress shall have the power...to promote the Progress of Science and the useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.*" Note that the promotion of the progress of science and useful arts (i.e., the public having access and ability to use copyrighted material owned by authors and inventors) takes precedence over the ownership of the work.

In other words, the U.S. Constitution puts more importance on **the public's access to and use of creative works** than on ownership of those works.

Copyright holders, typically authors or creators, have certain exclusive rights to their works. These exclusive rights mean that other people cannot copy or distribute their works unless the copyright holder grants permission. There are several exceptions to these rights and we cover these exceptions in this guide under fair use, classroom use, and library use.

What Works Are Copyrighted?

U.S. Copyright law protects an **original work** that is in a fixed, tangible medium. A fixed, tangible medium can be anything that is written down, recorded, or published. All of these examples are copyrighted:

- Literary or prose works: books, anthologies, articles, letters, emails, prepared speeches
- Musical works and accompanying words
- Dramatic works, plays, and accompanying music and scripts
- Pantomimes, choreographic works, dances
- Pictorial, graphic, and sculptural works: maps, paintings, drawings, photographs (print or digital)
- Motion pictures: films, videos
- Audio/sound recordings
- Architectural works
- Software and accompanying documentation
- Websites

What Is Not Copyrighted?

Un-copyrighted works are any that are:

1. In the public domain or
2. Are NOT fixed in a tangible medium

For example:

- Works in the public domain. Generally, public domain is anything published before 1926; for example Darwin's *On the Origin of Species* (1859). Most U.S. government publications are public domain materials. For more information about what is in the public domain, check the **Copyright Term** chart or use the **Digital Copyright Slider** listed under **Resources** below.
- Impromptu or extemporaneous speeches, singing
- Listings of contents, short phrases, slogans
- Familiar symbols, designs (stop or one way signs, copyright symbol)
- Factual information, such as weights and measures, lists, addresses, dates. For example, a list of names and numbers in telephone book, or a listing of dates in a calendar.

- Ideas, procedures, methods, systems, recipes, processes, concepts, principles as distinguished from a description, explanation, or illustration
- Information that is common property or contains no original authorship. For example, height and weight charts

For more information on the public domain, [click here](#).

What Rights Do Owners Have?

Copyright owners have **a *bundle of rights***. They can

- Reproduce their work
- Distribute it
- Prepare derivative works
- Perform their work and
- Display it

These rights are inseparable. In other words, a copyright owner cannot pick and choose the rights they wish to keep and those they don't. If copyright owners wish to share their work in different ways, they can apply a Creative Commons license to their work. See the [Creative Commons Licenses tab](#) for more information on sharing copyrighted works.

Resources

- **Copyright Term and the Public Domain**

A thorough chart listing copyright term by material type, date of publication, and country of origin. Developed by Peter Hirtle at the Cornell University Library

- **Digital Copyright Slider**

This interactive tool helps determine what is protected by copyright and what is the public domain. Developed by Michael Brewer at the American Library Association Office of Information Technology Policy.

- **The Copyright Genie**

This useful tool helps to decide if a resource is covered by copyright. It makes a complex and often sleep-inducing topic fun and engaging. Note: You may get a "not a safe site" warning but this is because the site's security certificate has expired. The site is ok to use.

Fair Use

What is Fair Use?

Fair use is the right of the public to access copyrighted works. Copyright holders cannot completely restrict access to their work or restrict the use of it. Section 107 of the U.S. copyright law designates that copyrighted materials may be used under certain circumstances. These circumstances are known as **fair use**.

Fair use ensures both our ability and our democratic right to freely exchange and transform ideas. If your use is fair, permission from the copyright holder is not required. Specifically, Title 17 of USC §107 states:

In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

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.

How To Apply Fair Use to Your Situation

Fair use is analyzed on a case-by-case basis. Fair use is extremely important to educators because it allows them to use copyrighted materials in the classroom. Keep in mind that not all fair use is educational in nature and not all educational uses are fair.

To figure out if your intended use of a work is fair, you need to balance the use based on the four factors. If your responses weigh in favor of fair use, then you may use the material without obtaining permission from the copyright holder. If your responses weigh against fair use, then you are best advised to obtain permission for the use. See the **Getting Permission** tab for more information.

Here's a handy chart to help you determine whether your use is fair. You might also want to download the Fair Use Checklist created by D. Buttler and K. Crews.

 Favors	 Opposes
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1st Factor: Purpose and Character of the Use

<ul style="list-style-type: none"> • Nonprofit organization • Education/teaching • Research/scholarship • Criticism/commentary • News reporting • Transformative use • Personal use • Parody 	<ul style="list-style-type: none"> • For-profit • Commercial • Entertainment • Bad faith behavior • Denying credit to original author
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2nd Factor: Nature of the Work

<ul style="list-style-type: none"> • Published • Non fiction • Factual • Important to instruction 	<ul style="list-style-type: none"> • Unpublished • Fiction • Creative • Plays, novels, music, art
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3rd Factor: Amount & Substantiality of the Amount Used in Relation to the Whole

<ul style="list-style-type: none"> • Small amount used • Amount to be used is not central or significant to the work • Amount used is appropriate for educational setting 	<ul style="list-style-type: none"> • Complete OR large amount of work is used • Amount used is central to the work or "the heart of the work"
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4th Factor: Effect of the Use on the Market

<ul style="list-style-type: none"> • User owns a lawfully acquired or a purchased copy of the work • One or a few copies made • No significant effect on the market or on the potential market of the work • No similar product marketed • No licensing mechanism 	<ul style="list-style-type: none"> • Use could replace the sale of the work • Many copies made • Use impairs the market or the potential market of the work • Licensing mechanism available or affordable permission option available • Repeated or long-term use
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Adapted from Crews, K. *Fair use checklist*. Columbia University Libraries. Last updated May 14, 2008. Retrieved September 25, 2018 from <https://copyright.columbia.edu/content/dam/copyright/Precedent%20Docs/fairusechecklist.pdf>

A Fair(y) Use Tale [short video]

Below is a brief copyright law primer by the [Stanford Fair Use Project](#). It is compiled with Disney clips. The irony here, of course, is that Disney has played a major role in working to change U.S. law in extending terms of copyright protection on its works. See [Sonny Bono Copyright Term Extension Act](#). So this tongue-in-cheek video pokes fun at Disney's prolific legal actions regarding copyright while using the clips to provide instruction on fair use. This video is just over 10 minutes in length

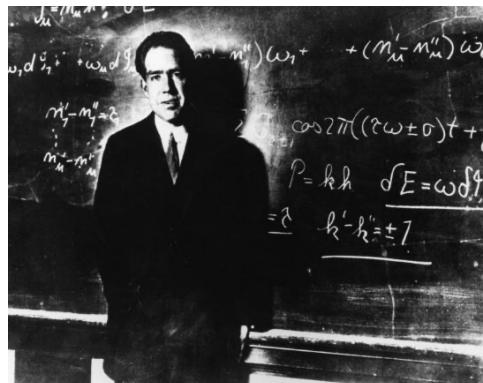
[youtube.com/watch?si=hgVfaF28OCsq6RGA&embeds_referring_euri=https%3A%2F%2Fnmsu.libguides.com%2F&source_ve_path=MTY0NTA2&v=CJn_jC4FND0&feature=youtu.be](https://www.youtube.com/watch?si=hgVfaF28OCsq6RGA&embeds_referring_euri=https%3A%2F%2Fnmsu.libguides.com%2F&source_ve_path=MTY0NTA2&v=CJn_jC4FND0&feature=youtu.be)

Resources

- Fair Use Evaluator

Developed by Michael Brewer for the American Library Association Office of Information technology, this tool provides a fair use analysis. It also gives users a time-stamped, pdf document that they will find invaluable should they ever be asked by a copyright holder to provide a fair use evaluation and the data used to support that evaluation.

Classroom Use (Face-to-Face)



Niels Bohr, standing at blackboard

Image credit Picryl.com

Available at: <https://picryl.com/media/niels-bohr-standing-at-blackboard-principal-investigator-project-analog-conversion-85f94c>

According to the *Agreement on Guidelines for Classroom Copying* (<http://www.copyright.gov/circs/circ21.pdf>), you may make single print copies

of the following for scholarly research or use them in teaching or for lesson planning. Please note that these are **minimum guidelines** and that copyright law **does not specify amounts that constitute fair use**. What follows are guidelines only and not hard and fast rules:

- A chapter from a book.
- An article from a periodical or newspaper
- A short story, short essay, or short poem
- A chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper

Multiple print copies (not to exceed in any event more than one copy per student in a course) may be made if:

- the copying meets the tests of brevity and spontaneity (addresses the amount and plan of use)
- the copying meets the cumulative effect text (addresses frequency of use)
- each copy includes a notice of copyright

Provided that overall:

- the copying does not replace or substitute anthologies, compilations, or collective works
- the works copied are not “consumables” such as workbooks, guides, or test booklets
- the copying does not:
 - substitute for the purchase of the original;
 - is not directed by a higher authority;
 - is not used repeatedly by the same instructor for the same course;
 - no charge beyond the actual cost of the copying is passed on to the student.

We recommend that you conduct a fair use analysis each time you plan to use a copyrighted work and retain records of your analysis. See *How to Apply Fair Use to Your Situation* on the [Fair Use tab](#) in this guide.

Film & Music in the Classroom

[Section 110 of U.S. Copyright law](#) clearly permits the use of lawfully obtained music and/or video in face-to-face classroom settings. These are typically referred to as performances or displays. In addition, a fair use case can also be made for changes to materials undertaken for purposes of commentary, criticism, or parody. We recommend that you conduct a fair use analysis each time you plan to use a copyrighted work and retain records of your analysis. Repeated use generally erodes a fair use case.

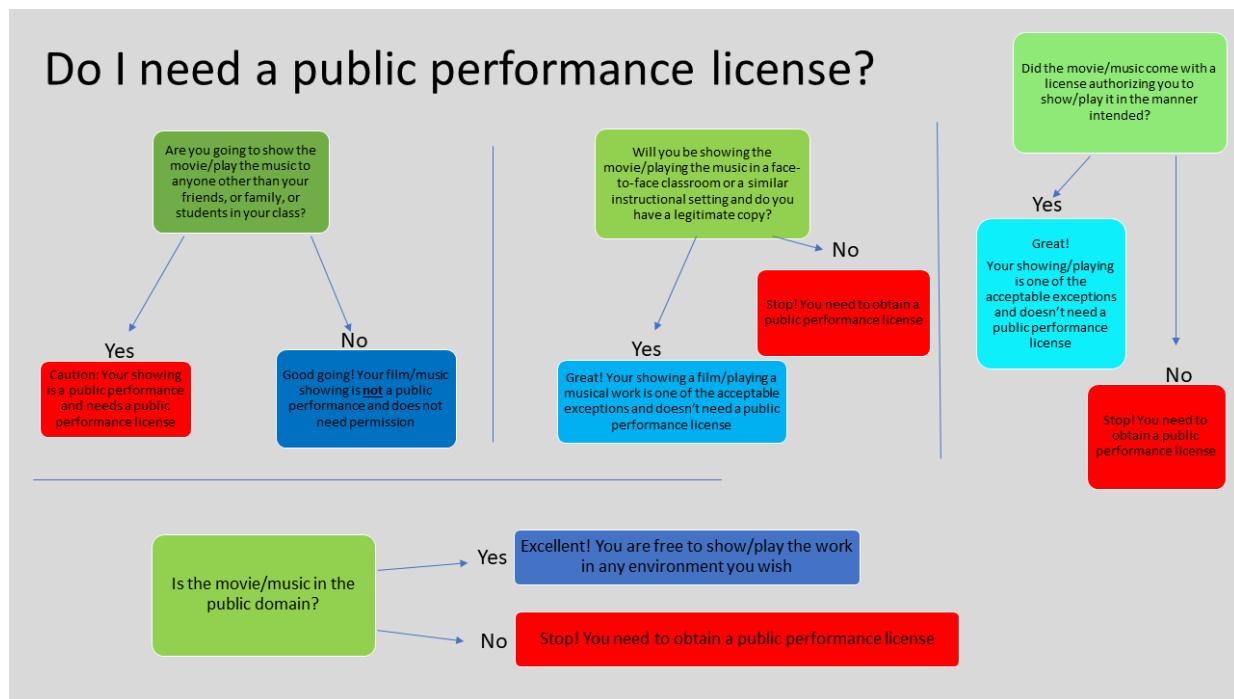
Educators may also record a program at home and show these segments in class in keeping with [Kastenmeier guidelines](#). Please be aware that broadcasts, including the news, are generally protected by copyright. Some public broadcasting programs offer educators more extensive terms of use.

Netflix allows for some Netflix original content to be shown during class using an individual subscriber's login for educational purposes. See their [Educational Screenings of Documentaries](#) section.

Group Performance (Non-Classroom Use)

Please be aware that these exemptions for playing music and video in a classroom are unique to physical classroom settings. If a performance (screening a film, playing music) is not a part of a class activity but is part of a film series, concert series, etc. it is generally considered to be a public performance. In these cases, one generally needs to secure public performance rights. See the [Getting Permission](#) tab for more information.

The graphic below runs through several scenarios requiring public performance licenses.



Based on work by Steven J. McDonald, General Counsel Emeritus, Rhode Island School of Design.

What Can You Use & When Can You Use It?

		Your Proposed Use				
		Exhibit materials in a live classroom?	Post materials to an online class?	Distribute readings?	Create electronic reserves?	
Copyrighted Works	Not Copyrighted	Works in the Public Domain (US Govt publications, pre-1923 publications, & a few others)	Yes	Yes	Yes	Yes
	Your own copyrighted works	Yes	Yes	Yes	Yes	
	Open Access Works	Yes	LINK	LINK	LINK	
	Electronic Works Licensed by NMSU - For example, articles from subscribed e-journals or found in subscribed databases, Kanopy films, etc.	Yes	LINK	LINK	LINK	
	Electronic Works with a Creative Commons License - varies with license, usually permitted but if not	Yes	LINK	LINK	LINK	
	Other - when no other categories apply	Yes	Yes*	Yes**	Yes**	

* If meets either TEACH Act or Fair Use Standards, otherwise, LINK or get permission

**If meets Fair Use Standards, otherwise, LINK or get permission

Chart adapted from Association of Research Libraries brochure [Know Your Copyrights](#)

Resources

- [Agreement on Guidelines for Classroom Copying](#)
Resource mentioned above. Circular 21 from U.S. Copyright Office

- [Code of Best Practices in Fair Use in Media Literacy Education](#)
Intended to help educators using media literacy concepts and techniques interpret the copyright doctrine of fair use. From the Center for Social Media at American University.
- [Exceptions for Instructors in U.S. Copyright Law](#)
This tool guides users through the educational exceptions in U.S. copyright law, helping to explain and clarify rights and responsibilities for the performance and display of copyrighted content in traditional, distance, and blended educational models. Developed by Michael Brewer, American Library Association Office of Information Technology Policy.
- [Guidelines for Educational Uses of Music](#)
Helpful guidelines re-posted by the University of Washington
- [Videorecording for the Classroom \(includes the Kastenmeier Guidelines\)](#)
Resource mentioned above re: playing music and/or video in class
- [Know Your Copyrights: What You Can Do](#)
Downloadable document directed at faculty and teaching assistants. Includes face-to-face and online teaching scenarios. Prepared by lawyer and copyright expert Peggy Hoon and available from the Association of Research Libraries.

Online Classroom Use

General guidelines for Online Instruction: The TEACH Act

In 2002, the TEACH Act ([Technology, Education and Copyright Harmonization Act](#)), which later became part of [Public Law 107-273](#), attempted to address the use of copyrighted materials in distance and/or online education settings.

What types of use does the TEACH cover?

Specifically, it covers transmission of:

- entire non-dramatic work or works
- reasonable and limited portions of any other performance
- displays of any work in amounts comparable to typical face-to-face displays

What do I have to do to use the TEACH Act?

The TEACH Act includes a number of criteria for compliance including institution-level criteria as well as criteria applying to the specific educational setting. Unless all criteria are met, the TEACH Act may not apply. Below is a list of TEACH Act criteria.

Institutional Criteria—only non-profit educational institutions are eligible to take advantage of TEACH.

Institutions must:

- have copyright policies, provide informational materials about copyright, and provide appropriate notices about copyright protection;
- use technological measures to reasonably prevent further distribution of and retention of copyrighted works beyond a class;
- avoid dismantling any technological measures taken by copyright holders that prevent retention and distribution.

Educational Setting Criteria—performances and displays must:

- involve only lawfully made copies of a work
- not include those materials primarily marketed for the purposes of distance education (i.e. an electronic textbook or a multimedia tutorial).
- be a regular part of your planned instruction
- be made by, at the direction of, or under the supervision of the teacher;
- directly relate to or be of material assistance to the teaching content (does not cover independent readings)
- be made for and technologically limited to students who are currently enrolled in the class.

What if the TEACH Act doesn't seem to apply?

The TEACH Act does not in any way undermine or set aside fair use. Educators may always look to fair use if the TEACH Act does not apply to a particular example. For more information, see the ***Fair Use*** tab.

Even if you do not seek to use the TEACH act, it is highly recommended that online and distance educators follow these best practices when using copyrighted materials in a distance or online setting.

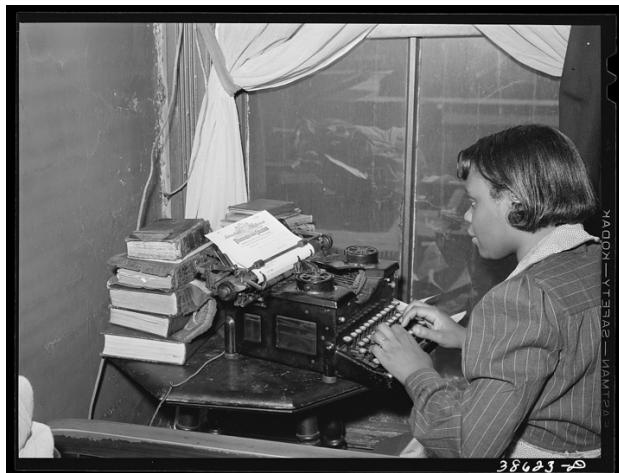
1. Include a notice to students that the materials may be protected by copyright, are intended only for the purposes of the class, and may not be further distributed or retained. If you use the Library's Reserves service where you request we create a pdf of lawfully obtained material, we will include the copyright notices with your class materials.
2. Restrict access to course materials to only those students currently enrolled in the class. Courseware systems such as Canvas will help you do this.
3. Discourage retention and further distribution of materials by linking to or streaming resources instead of making copies. Terminate access once the class is done.

TEACH Act Resources

- **Know Your Copyrights: What You Can Do**
Helpful brochure directed at faculty and teaching assistants. Includes face-to-face and online teaching scenarios. Written by lawyer and copyright expert Peggy Hoon.

- [The TEACH Act and Some Frequently Asked Questions \(American Library Association\)](#)
Written by librarian and copyright expert Kenny Crews, this guide gives a good overview of what faculty can and cannot do in their online courses.
- [TEACH ACT checklist](#) (downloadable file)
This handy checklist is from the University of Texas at Austin's *Copyright Crash Course* and provides a quick way to assess whether a specific use falls under TEACH Act guidelines.

Getting Permission



**Wife of a railroad worker typing a letter.
Chicago, Illinois. Cook County, Illinois, 1941**

Image credit: Lee, Russell, photographer.

Available at: <https://www.loc.gov/item/201778821/>

You will need to seek permission for the use of two types of copyrighted material.

1. Your own previously published work to which **you do not hold the copyright**.
This is often the case with your published journal articles. The journal publisher typically owns the copyright.
2. Another author/creator's work that doesn't fall under the principle of fair use.

If the material used is in the public domain, authors are not required to seek permission. That said, if the use of the material falls outside fair use, authors should provide acknowledgment and secure written permission.

Thesis and dissertation writers should consult Kenny Crews ***Copyright Law and Your Dissertation or Thesis*** listed in the ***Resources & Tools*** section below for a thorough discussion of their rights regarding their thesis/dissertation.

What Needs Permission?

Types of Material Needing Permission

Here are some examples where the use falls outside of fair use and/or other exceptions:

- **Quoted excerpts from published materials.** The principle of fair use allows for educational and/or non-commercial use of a small amount of material so long as it does not constitute the heart of the work and is genuinely needed for purposes of the use. For example, stanzas of poetry, letters, song lyrics, diary entries, and other items that constitute either the complete work or a large part of it usually require permission. The author of a letter, rather than the recipient, generally holds copyright to the letter, but permission to publish the letter will also be required from the recipient.
- **Quoted excerpts from unpublished materials.** These include unpublished letters, speeches, and papers. In cases where the work has not been previously published, users should obtain the author's permission to publish any part of it.
- **Quotations from archival materials.** Although the archive may or may not hold copyright to the material used, users should obtain permission from the archive as holder of the material.
- **Images, photographs, tables, charts, maps, graphs, and similar works.** Users should plan to obtain permission from not only the copyright owner of the work (i.e., the creator of the work), but also from the owner of the physical object (e.g., a museum, archive, or individual). Where photographs depict private individuals in private settings, users may also need permission from those in the photo.
- **Interviews.** Depending on the circumstances, copyright to an interview may be held not only by the interviewer, but also by the interviewee. A good example of this is where the interviewee is tape recorded or recorded verbatim. In this situation, the wisest choice is to obtain permission from both the interviewer and the interviewee.
- **Government documents and materials.** Although U.S. government works (i.e., those created by a governmental officer/employee as part of his/her official duties) cannot be copyrighted, this does not mean that you can freely use any documents or materials in the government's possession. The U.S. government may hold copyright to a work where it has been assigned by the copyright holder.

Sample Letters

Below are examples of typical permission letters you may wish to use in securing permission for classroom or publication use. For a lot more detail, consult the [Association of American University Presses FAQ on obtaining permissions](#).

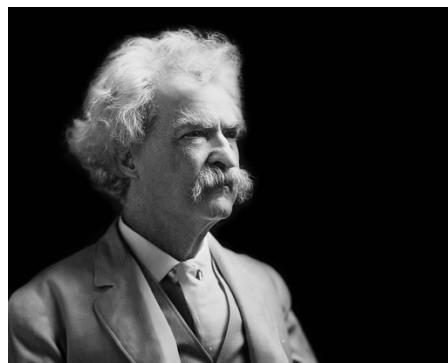
- [Permission Letter Requesting Classroom use](#)
- [Sample Permission Letter Requesting Publication Use](#)

Resources & Tools

- Crews, Kenneth. 2013. *Copyright and Your Dissertation or Thesis: Ownership, Fair Use, and Your Rights and Responsibilities*. Retrieved from https://media2.proquest.com/documents/copyright_dissthesis_ownership.pdf on September 27, 2018.
- Schoefield, Brianna, & Walker, Robert Kirk, eds. 2018. *Understanding and Negotiating Book Publication Contracts*. Retrieved from https://www.authorsalliance.org/wp-content/uploads/2018/10/20181003_AuthorsAllianceGuidePublicationContracts.pdf on October 15, 2018.
- University of Michigan Library. *Obtaining Copyright Permissions*. Retrieved from <https://guides.lib.umich.edu/permissions> on September 26, 2018. This is an excellent guide to obtaining permissions for all sorts of copyrighted work, licenses, dramatic work, images, textual works and more. There is an especially helpful section on identifying who the copyright holder is.

Author/Creator Rights

What Rights Do I Have As An Author/Creator?



Mark Twain

Image credit: Pixabay

Available at: <https://pixabay.com/en/mark-twain-american-author-writer-1602117>

Creative Commons license: CC0

Under U.S. Copyright law, authors/creators have the exclusive right to

- Reproduce the work
- Create derivative works
- Perform or display the work in public
- Authorize others to do any of the above
- Reuse the work in teaching, publications, and in scholarly/professional activities
- Archive the work in a personal, discipline-specific, or institutional repository
- Transfer those rights to another individual or entity

Remember that copyright protection exists from the moment an original work is created in a fixed, tangible medium or form of expression. A copyright symbol is not required to show that an author/creator owns the copyright. At the same time, authors/creators may wish the additional protection that copyright registration provides. To register your work visit the [U.S. Copyright website](#)

What Right Do Journal Publishers Have?

Traditionally, most journal publishers require that authors sign their copyrights over to them when negotiating publishing agreements. With the rise of the Open Access movement and the U.S. government's requirement that scholarship resulting from federal funding be publicly available, publishers have yielded somewhat in their stringent publication agreements. Many authors wish to self-archive the published results of their research and also wish to archive their publications in their institution's repository.

Publishers' policies vary significantly. The [SHERPA/RoMEO database](#) provides summary information on publisher copyright policies and self-archiving. Publisher policies and author agreements are often found on their websites under the author information or article submission sections.

If your publisher doesn't accept an addendum they may offer a contract that allows authors more rights. Here are a few examples of publisher copyright agreements that allow for authors to retain some rights.

- [American Physical Society](#) - Some rights are retained by authors
- [Elsevier](#) - Some rights are retained by authors
- [Public Library of Science \(PLOS\)](#) - Authors retain their copyrights under Creative Commons license

What Rights Should I Retain?

You Should At Least Reserve Some Rights

By negotiating changes to the standard contract prior to publication helps authors retain their rights. So before signing a publishing contract, it is recommended that

authors cancel and modify the contract language from granting "exclusive" rights to the publisher to granting "non-exclusive" rights to the publisher. Initial any changes and submit a signed copy to the publisher. Publishers often will accept amended contracts.

You Should Strive to Retain Copyrights With a Transfer of Limited Rights to the Publisher

Here are some options:

1. Strike out the original exclusive transfer language in the publisher-provided contract, replacing it with something similar to the following:

"The author grants to the Publisher exclusive first publication rights in the Work, and further grants a non-exclusive license for other uses of the Work for the duration of its copyright in all languages, throughout the world, in all media. The Publisher shall include a notice in the Work saying "© [Author's Name]." Readers of this article may copy it without the copyright owner's permission, if the author and publisher are acknowledged in the copy and copy is used for educational, not-for-profit purposes."

2. Use an author addendum that works for you. An addendum provides you with the additional opportunity to grant other rights to the public - such as the freedom to use the work for non-commercial purposes provided attribution is given - which fosters further use and impact of your work. Here are a few examples.

- [SPARC Author's Addendum](#)
- [Science Commons Scholar's Copyright Addendum](#)
- [Big Ten Academic Alliance Author's Copyright Contract Addendum](#)

3. [Creative Commons](#) helps you publish your work online AND it tells the world exactly what can and can't be done with your work. When you [choose a license](#), Creative Commons provides you with tools and tutorials that let you add license information to your own site, or to one of several free hosting services that have incorporated Creative Commons. For more information see the [Creative Commons Licenses](#) tab.

Resources

- Crews, Kenneth. 2013. *Copyright and Your Dissertation or Thesis: Ownership, Fair Use, and Your Rights and Responsibilities*. Retrieved from https://media2.proquest.com/documents/copyright_dissthesis_ownership.pdf on September 27, 2018.
- Schoefield, Brianna, & Walker, Robert Kirk, eds. 2018. *Understanding and Negotiating Book Publication Contracts*. Retrieved from https://www.authorsalliance.org/wp-content/uploads/2018/10/20181003_AuthorsAllianceGuidePublicationContracts.pdf on October 15, 2018.

Thesis & Dissertation

How Copyright Affects Your Thesis or Dissertation

Prior to submitting your dissertation or thesis to the [NMSU Graduate School](#), consider the following:

- **Use of others' work**—Are you using work created by someone else? Here are some examples: photographs, drawings, diagrams, or lengthy text excerpts. If so, [you might need to get permission prior to submission](#).
- **Use of archival materials**—You may need to check on any agreements or terms of use because these can affect what is publishable from those materials.
- **Use of culturally sensitive materials**—This is an ethical consideration so you should think about whether your publication might lead to [the exploitation of resources, people, or knowledge](#).
- **Use of information about a living person**—Consider the individual's privacy rights.
- **Your rights as an author**—[You are the copyright owner of your work but what does that mean?](#) And what type of rights do you have for your work?
- **Embargos**—Think about whether you wish to delay the release of your thesis/dissertation. There may be good reasons for such a delay. The [NMSU Graduate School provides Master's and Doctoral candidates embargo forms](#).

The Thesis Prayer by Jonathan Lin

```
my laptop on table
macbook by thy name
my thesis come
my 18 panels will be done
in illustrator as it is at the printers
give us this day and give it more hours
and forgive our spelling errors
as we forgive the cad lines that do not snap against us
And lead us to good renders
and delivery them on time
for thine is installed with rhino3d,
the adobe suite and a dualcore processor
for goodness sake don't burn out
right-click to save / amen
```

["the thesis prayer"](#) by [jonolist](#) is licensed under [CC BY-SA 2.0](#)

Q1: Do I need Permission?

Is what you are using protected by copyright? Aren't sure? For a list of types of work that are typically considered protected by copyright, [check the **What is copyrighted** list here](#).

You **do not need permission** if any one of the following is true:

- The work is in the [public domain](#)
 - Works in the public domain are available for use, no permission is required.
 - Public domain works are either those whose copyrights have expired or were ineligible for copyright protection,
 - [See Cornell University's handy chart outlining what is in the public domain](#)
- The copyright holder has provided you a license to use the work. For example, perhaps the creator has licensed the work's use through [Creative Commons](#) and your use falls within one of the allowable categories.
- You are relying on fair use.

Q2: How Do I Get Permission from the Copyright Holder?

If your work isn't in the public domain, or licensed to share, or fair use isn't applicable, then most likely you will need to seek permission to use the material. But how do you do that?

First, keep in mind that getting permission can take a while so you should **plan ahead**.

1. Research and locate the copyright holder. Aren't sure how to do that? [Ask for help](#)
 - For many publications, the publisher is the copyright holder but not always. Most publishers have copyright or permission to use sections on their websites. If they aren't the copyright holder, they will direct you to who is.
 - For photographs or films, often copyright holders use a third-party licensing system. They will grant you a license to use, usually for a fee.
 - Sometimes two or more copyright holders are involved. For example, let's say you want to use an article or a book with photographs or drawings. The article and the images may belong to two different copyright holders.
2. Ask, in writing, for permission. The Association of University Presses have several good examples of [different types of permission to use letters](#) and the [University of Texas also has a good template to use](#). *N.B. This link downloads as a .pdf and doesn't link directly to a website.*
3. Send the letter to the rights holder. Here are some elements you should include:
 - Description of the material you wish to use (e.g., title, author, page numbers)
 - A photocopy or a link to the material
 - How, why, and where you will use the material.

4. If you can't find the rights holder or if you don't receive a response...
 - o Consider using other material or...
 - o Consider using material that qualifies as a fair use and/or...
 - o Contact lib-copyright@nmsu.edu for more help

How Do I Manage My Copyright

What are your rights?

As the author of your thesis or dissertation, you have a long list of rights. You own the copyright to your work and make decisions on its use. When you deposit your thesis or dissertation with ProQuest, your work will be available full text to the NMSU community but others who wish to read it must purchase access through ProQuest. You will receive 10% of the profits. ProQuest retains non-exclusive rights to distribute your thesis or dissertation, meaning that you can make it available elsewhere at any time.

What about registering your copyright?

Your thesis or dissertation is automatically copyrighted once it is in a **fixed, tangible medium**. That is once your work is recorded, whether in print or in a computer file.

You don't need to register for copyright because copyright is implicit. Once your work is finalized, it is considered copyrighted. In some cases, you might want to further protect your work by registering it with the [U.S. Copyright Office](#). Such formal registration provides very strong protection of your rights against infringers or plagiarists because registration is a public record that you are the owner and author. For an in-depth discussion of this topic, see Dr. Kenneth Crews [Copyright and Your Dissertation or Thesis: Ownership, Fair Use, and Your Rights and Responsibilities](#).

What about putting an embargo on your thesis/dissertation?

There are some instances where you might want to consider requesting that your work be embargoed for up to two years. Here are a few examples: your work contains patentable rights, or you have ethical concerns, or your journal/book publisher has requested it. You should consult with your advisor about whether to request an embargo or not. [Follow this link and choose your status \(masters or doctoral\) to find explanations and forms to request an embargo.](#)

Want to know more about why you might want to embargo your thesis/dissertation? [ProQuest has a handy guide](#) that maps out considerations and possible actions.

What about licensing your thesis or dissertation beyond fair use?

Other scholars can use your copyrighted work for their research within the framework of fair use. But you can license your work beyond what is allowable under fair use with a [Creative Commons license](#). These licenses are focused on broader access, varying

in what usage is allowed, although these licenses are much more flexible than copyright law. Check out the [Open Access Publishing PLUS guide](#) prepared by ProQuest to explore options and be sure to ask your advisor for help.

Still Have Questions?

Ask us at lib-copyright@nmsu.edu

NMSU Policies

Copyright-Related Policies at NMSU & NMSU Library

New Mexico State University expects students, faculty, and staff to comply with copyright law. Violators may be subject to both University penalties as well as liability under federal law.

From the [Administrative Rules & Procedures of New Mexico State University](#)

- [3.02 Conflict of Interest](#)
- [11.50 Intellectual Property Management and Commercialization](#) -- Ownership & distribution of earnings from intellectual property
- [12.50 Art Collection Policies](#) -- Acquisition guidelines
- [15.11 Acceptable Use](#) -- Expectations for copyright compliance
- [15.53 NMSU Server Administration and Operation](#)
- [15.80 Use of University Logo](#)
- [15.81 Web Governance](#)

Copyright-Related Policies at NMSU Library

- [Policy #011 Reserves](#)
- [Policy #033 Information Delivery Services](#)
- [Policy #039 Acceptance of Oral Histories](#)

Downloading And File Sharing

Consequences of Illegal File Sharing & Downloading



Pirate download tower

Image credit: SVGSilh

Available at: <https://svgsilh.com/image/2047249.html>

Creative Commons license CC0

NMSU takes the illegal downloading of copyrighted material seriously, and so does the federal government. In fact, anyone found to have infringed on a copyrighted work through illegal downloading may be liable for statutory damages of up to \$30,000 for each work infringed and, if willful infringement is proven by the copyright owner, that amount may be increased to up to \$150,000 for each work infringed. The damages don't include liability for the attorney's fees incurred by the copyright owner to enforce his or her rights.

Be smart, don't download copyrighted material without the legal right to do so.

If NMSU discovers you are illegally downloading copyrighted material, this is what happens:

Strike 1—the first offense:

1. You lose your network access privileges and/or your computer gets disconnected from the network.
2. ICT, NMSU's Information Communication and Technology department, will contact you via email to inform you that a violation has been detected and to explain the disconnection/network access removal. ICT will request that you send a confirmation via email stating that you understand the nature of the violation.
3. Your network privileges will be restored along with your computer's access. ICT will log the event.

Strike 2 - the second offense:

1. You lose your network access privileges and/or your computer gets disconnected from the network.
2. You will be directed to meet with NMSU's Chief Information Security Officer (CISO), Chief Information Officer (CIO), or designee to discuss the violation and the resulting penalties for further violations. You will be required to sign a letter of acknowledgment and compliance.
3. Your network privileges will be restored along with your computer's access upon authorization from the CISO, CIO, or designee.

Strike 3 - your last chance:

1. You lose your network access privileges and/or your computer gets disconnected from the network.
2. Details of the violation will be forwarded to the NMSU Dean of Students for resolution. If you are a resident in Student Housing the violation details will also be sent to the Director of Student Housing for additional resolution.
3. Your network privileges will be restored along with your computer's access upon authorization from the CISO, CIO, or designee.

A special note:

In the past, NMSU has been subpoenaed to provide the names of those who have illegally downloaded copyrighted material. We strongly advise you to refrain from illegal downloading of copyrighted materials to avoid this outcome.

Resources

For additional information, including legal downloading resources, please visit:

- [How Not to Get Sued for File Sharing](#)

Provides information on how to share files legally

- [Legal Sources of Online Content](#)

Provides resources for legal downloading

- [OnGuard Online](#)

Provides information on file sharing security

For further assistance with questions about downloading or file sharing
email help@nmsu.edu or call the ICT Help Desk at 646-1810 or see the following:

- [NMSU's Policy on Acceptable Use of ICT Equipment & Resources, Chapter 15, Section 11](#)
- [To report network security problems or suspected copyright infringement](#) - or e-mail infosec@nmsu.edu

Copyright & Course Reserves

The library can help!

Remember that the NMSU Library subscribes to hundreds of full-text databases and thousands of electronic journals.

Although individual licenses vary, in most cases these resources may be linked to and/or incorporated into electronic reserve lists for your class.

For starters, we will create persistent URLs to journal articles found in the Library's subscribed journals or databases for you to upload to Canvas for your courses. If you would like to do this yourself, we will be happy to guide you through the process.

We will also perform a copyright analysis of any materials you wish to either put on Course Reserves at Zuhl Library or use in your course. We can also help with scanning copyright-compliant information materials for your courses. Call 575-646-4441 or e-mail lib-reserves@nmsu.edu

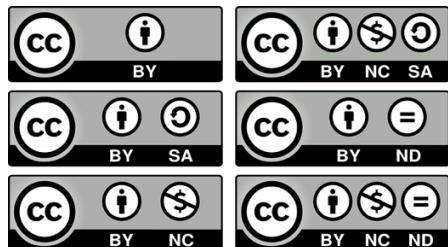
And, should it be necessary, we will also work on your behalf to obtain copyright clearance for any course reserve materials.

Creative Commons Licences

What Are CC Licenses?

Creative Commons (CC) licensing is a cornerstone of the Open Educational Resource movement. A CC license allows content creators to specify how their work can be used. Whereas copyright confers a bundle of rights on the copyright holder, applying a CC license allows the copyright holder to share their work in a variety of ways.

A Creative Commons license is typically displayed at the bottom or the end of a work. Sometimes they have clickable icons, indicating the specific license covering the work. A CC license answers the question, "What can I do with this work?"



Creative Commons license icons

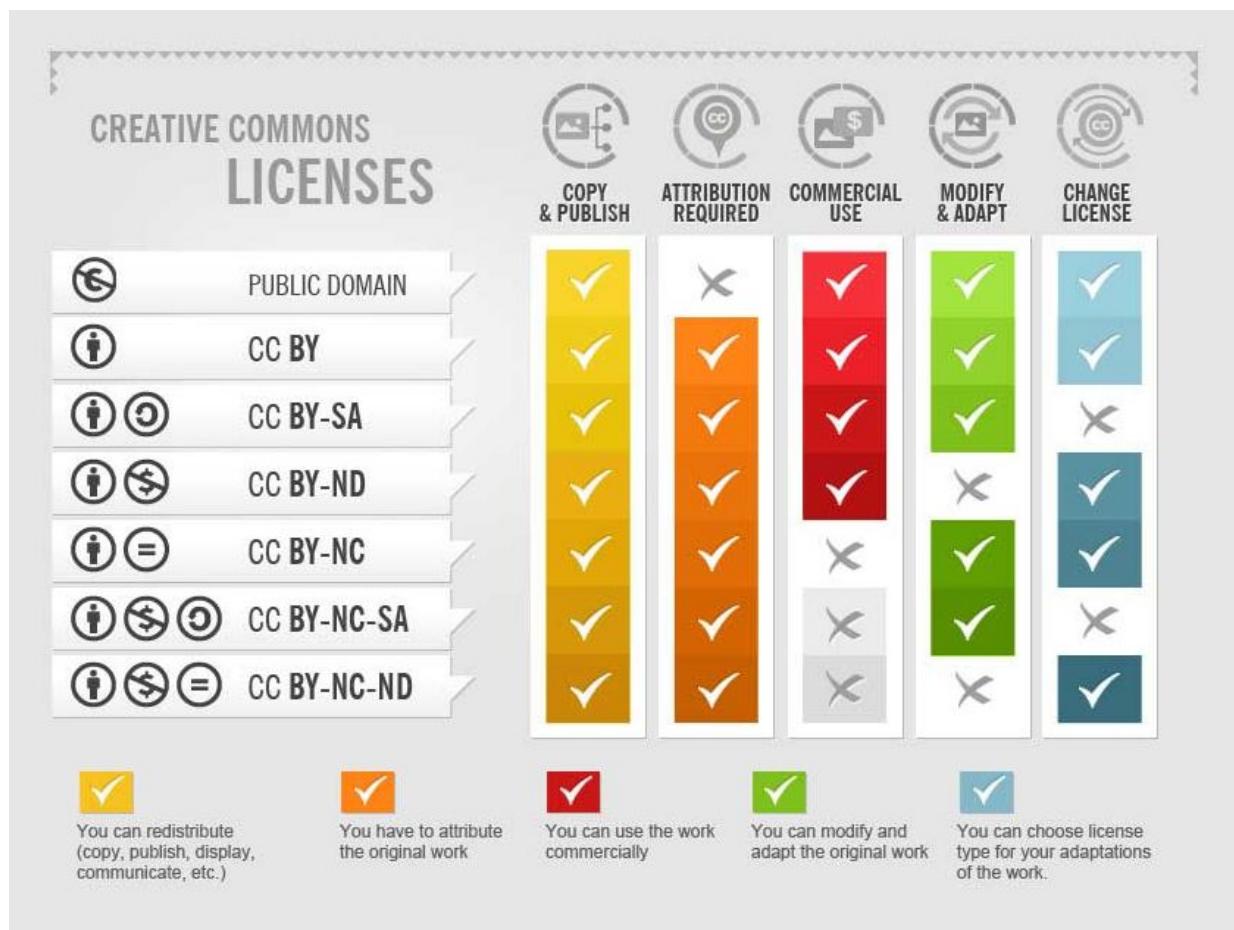
Image credit Pixabay

Available at: <https://pixabay.com/vectors/creative-commons-licenses-icons-by-783531/>

Creative Commons license: CC BY

How Can I Use Them?

You can apply for a Creative Commons license to allow your work to be reusable in certain ways and for specific purposes. Check out [Creative Commons for in-depth explanations of the different license types](#) or use this handy chart showing each license and types of allowable uses:



Creative Commons license infographic

Image credit: Flickr

Available at: <https://www.flickr.com/photos/48305871@N00/33350050260/>

Creative Commons license: CC BY-SA 2.0

How Can I Get a CC License for My Work?

Visit the [Creative Commons](#) website and select [Share Your Work](#). From there, you can choose the type of license you wish to apply by answering a few questions about how you wish your work to be used. Then you will be provided with the license.

You can also share your work on a variety of platforms such as [YouTube](#), [Flickr](#), [Vimeo](#), [PLOS](#), or [MIT Courseware](#). These platforms will help to distribute your work to a wider audience.

Open Education Resources (OERs), Open media resources & the public domain

Open Education Resources (OERs),



A dance in Penasco, New Mexico,
Taos County United States, 1943.

Image credit: Collier, John, Jr, photographer

Available at: <https://www.loc.gov/item/2017842182/>

Open Education Resources (OERs), A Brief List

Where can you find materials that you may use, re-use, re-mix, and/or share without violating copyright? A growing number of open source or open education resources (OERs) are available. Many of these sites, especially *Creative Commons*, offer ways for you to contribute your own works to the community.

Open Textbook Library

A large collection of high-quality digital textbooks that can be downloaded for free as PDF or e-book files. The books come from multiple authors and publishing organizations and cover a wide range of academic areas, including the humanities, natural and social sciences, and mathematics, as well as medicine and law.

Open Stax

An initiative of Rice University, this collection offers free learning modules and textbooks developed and peer-reviewed by educators.

OER by Discipline Guides from McMaster University

Created by McMaster University, this guide lists a broad range of open educational

resources organized by disciplines. The chapter entitled "**Repositories**" offers even more, excellent general collections of open resources.

Pressbooks Directory

A free, searchable catalog that includes thousands of open access books published by over 200 organizations and networks using Pressbooks.

MIT OpenCourseware

Open Access textbooks, videos and learning modules from over 2500 MIT courses.

Creative Commons

Share, Remix, Reuse — Legally. Creative Commons licenses provide a flexible range of protections and freedoms for authors, artists, and educators.

HEAL Health Education Assets Library

HEAL "is a digital library that provides freely accessible digital teaching resources of the highest quality that meet the needs of today's health sciences educators and learners."

Open E-Books

Directory of Open Access Books (DOAB)

A directory of thousands of academic open access books from hundreds of academic publishers including DeGruyter, SpringerNature, Taylor & Francis, Peter Lang, and Oxford UP. All books carry Creative Commons licenses. Books are peer-reviewed prior to being added to the database. DOAB titles are also searchable in the Library's catalog.

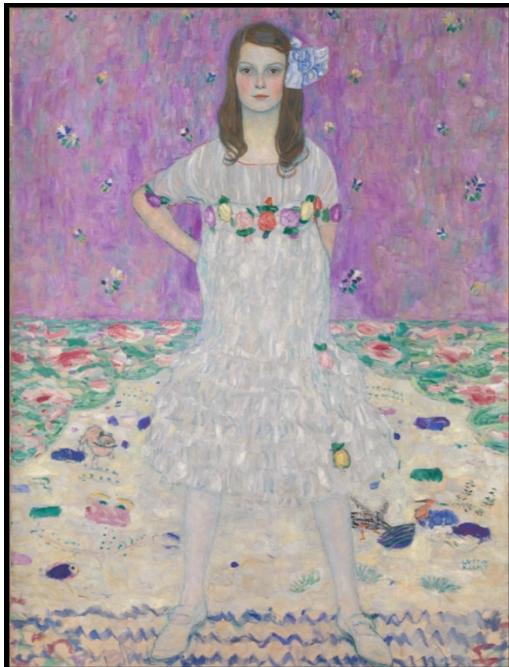
Internet Archive

Using controlled digital lending (CDL) to ensure one-to-one lending for a limited period, similar to current library practices in loaning physical books and other materials, the Internet Archive offers 1,300,000 modern e-books for two-week checkout by anyone with a free archive.org account. Borrowers may read them directly online or download them to Adobe Digital editions. The Internet Archive (IA) also offers some 20,000 freely available books and texts, as well as films, music, audiobooks, images, and many more resources. The IA also acts as a search engine for other available resources in important collections.

Note: Based on a judicial ruling in December 2023 by Judge Koelti (SDNY) in the case Hachette Book Group v. Internet Archive (No. 20-cv-4160, 2023 WL 2623787, S.D.N.Y. 2023), the Internet Archive was denied the ability to continue its CDL program because the judge viewed the program as a violation of copyright and not a fair use. In turn, the Internet Archive removed some 500,000 books from the program although many works in the public domain or orphan works remain for lending. The case is on appeal with the Second Circuit Court of Appeals and far from

over. For a more in-depth discussion and current updates, see https://en.wikipedia.org/wiki/Hachette_v._Internet_Archive

Images, Photographs, and Art Work: A Selective List



Mäda Primavesi, a painting by Gustav Klimt, 1903

Available from: The Metropolitan Museum of Art

At: <https://www.metmuseum.org/art/collection/search/436819>

Copyright: Public Domain

Creative Commons Image Search

Allows discovery of openly licensed and public domain images from museums, image banks, and other image repositories. Click on "filter" to search by image provider or license type.

Google Advanced Image Search

Be sure to use the *Usage Rights* search field to limit by license type.

Library of Congress Digital Collections

A free "digital record of American history and creativity."

Library of Congress: Prints & Photographs Online Catalog

Photographs, prints, drawings, posters, and architectural drawings, and more.

Metropolitan Museum of Art

Over 492,000 images of public-domain artworks, available for free and unrestricted use

National Gallery of Art

Public domain artworks from the collections of the National Gallery of Art in Washington DC.

Noun Project

Free clip art images requiring creator credit.

NYPL Digital Gallery

Illuminated manuscripts, historical maps, vintage posters, rare prints, photographs, and more, from the New York Public Library.

Open ClipArt

Open Clipart is an online media collection of more than 160,000 vectorial graphics, entirely in the public domain. All graphics are stored using the Scalable Vector Graphics (SVG) format. Major standard supported all across the web, SVG files are very portable and can easily be scaled, edited, or printed without deformation. [Join and contribute your own clipart to this public domain resource.](#)

Pixabay

Pixabay offers millions of royalty-free stock photos and videos.

The Commons on Flickr

"The key goals of The Commons on Flickr are to firstly show you hidden treasures in the world's public photography archives, and secondly to show how your input and knowledge can help make these collections even richer." Includes images from the Library of Congress, the Smithsonian, the Getty Research Institute, and others.

Film and Music



Scene from the film *Twelve Angry Men*, 1957.

Available at: <https://picryl.com/media/12-angry-men-scene-6004e2>

Copyright: Public Domain

Feature films, newsreels, and much more. Over 4,000 titles are now in the public domain with more added each year.

- **Free Music Archive**

A good resource for free or royalty-free music

- **Internet Archive - Audio Archive**

- **Internet Archive - Moving Image Archive**
- **Public Domain Movies**
Who knew there were so many?
- **Public Domain Films from the National Film Registry**
Hosted by the Library of Congress

The Public Domain



Public Domain Logo

Available from: Open Clip Art

At: <https://openclipart.org/detail/211358/public-domain-logo>

Copyright: Public Domain

What is "the public domain" anyway?

A work is considered to be in the **public domain** if it is not protected by copyright law. Typically, works in the public domain are free for the public to use in any way that they wish. A work may be in the public domain for a number of reasons, including:

- the copyright protection term on the work has expired
- the copyright protection for the work was never acquired or was lost
- the work is a U.S. government work. Note that state and local government works are *not* necessarily in the public domain, nor are works that have been created by agencies with which the federal government has contracted.

Generally, copyright expires 95 years after the work's publication date although there are exceptions. January 1st of each year is **Public Domain Day** as works enter the public domain. Duke University hosts a [Public Domain Day website](#) celebrating the annual entrance of works into the public domain.

Copyright protection terms have changed over time so it can prove challenging to determine when a U.S. work falls into the public domain.

- [Copyright Term and the Public Domain in the United States](#)

A very helpful chart maintained by the Cornell University Copyright Information Center.

- [Chapter 8: The Public Domain](#)

Detailed and informative discussion of the public domain. Part of Stanford University's excellent guide to *Copyright and Fair Use*.

- [Digital Copyright Slider](#)

A quick, interactive tool that helps determine what is protected by copyright and what is the public domain. Developed by Michael Brewer at the American Library Association Office of Information Technology Policy.

- [Is it in the Public Domain?](#)

An excellent and thorough 52-page guide created by the Samuelson Law, Technology & Public Policy Clinic at the University of California, Berkeley, School of Law.

FAQs

FAQs about Copyright in Higher Education

Although the entire **Copyright Essentials** guide has information intended to help students, faculty, and staff at NMSU, this tab addresses some specific questions that have either been asked by those at NMSU or that are common higher education copyright questions. If you have a question that isn't addressed here, please feel free to contact us at lib-copyright@nmsu.edu

These questions/answers assume that you have read or are familiar with the information found in the **Introduction** tab.

I am using someone else's model in my dissertation. Do I have to get permission to do this or is it fair use?

We recommend that you conduct a four-factor test of your specific use, but keep in mind that your dissertation is a publication that will be made available by ProQuest/UMI--a vendor responsible for the Dissertation Abstracts database and one that also sells dissertations and provides royalty payments to authors. ProQuest/UMI states that they will hold authors responsible for securing all appropriate permissions. Their guide, [Copyright and Your Dissertation or Thesis](#), provides examples of the types of materials for which they generally expect you to obtain permission before using in your dissertation. If you have reviewed the general information but would like more specific guidance, contact

ProQuest/UMI: <https://about.proquest.com/en/dissertations/student-authors/>

Should I register my thesis or dissertation with the U.S. Copyright Office?

It depends. Remember that copyright law protects an original work automatically as soon as it is fixed in a tangible form (saved to a file, printed, etc.). Because of this,

you enjoy copyright protection without any need for formalities such as copyright registration.

Copyright registration can be advantageous in some cases. If you think it is likely that others may infringe on your work and you wish to have the right to sue for damages, it is a good idea to register your work with the [U.S. Copyright Office](#). If your work is registered, it is much more difficult for someone else to make a claim that they were not able to determine that the work was copyrighted.

- [Proquest's Copyright and Your Dissertation or Thesis](#)
- [Questions? Contact Proquest](#)
- [US Copyright Office registration portal](#)

My friends and I rent and watch movies together. Why would you need permission for something like that?

You may not need permission, depending on the circumstances. A private showing between friends and family members would generally not require any special permission. In addition, copyright law permits showing movies in a face-to-face classroom setting when the audience is limited to the students registered for that class.

On the other hand, if you are showing movies in a public place or are holding a public screening (for example, for a student group or club), you will need to ask permission or pay for public performance rights. The right "to perform a work publicly" is one of the exclusive rights that copyright law grants copyright holders. ***It does not matter if you charge admission or not.***

Please note that NMSU expects that any individual or group sponsoring a public performance will either obtain the performance rights or the written approval of the copyright holder. NMSU Library films are generally not purchased with performance rights.

For information on how to obtain performance rights, see the excellent guide from Williams College listed below.

- [How to Obtain Performance Rights \(Williams College\)](#)

What is the difference between copyright and plagiarism?

Both issues involve using someone else's work, but they are actually quite different.

Plagiarism involves using someone else's words, images, ideas, etc. without giving them credit. Plagiarism is not illegal, though it is taken very seriously by educational institutions, including NMSU, and the academic penalties may be severe. See the NMSU Library's guide, [Plagiarism: What it is and how to avoid it](#) for more information.

Copyright involves using someone else's work without permission and without a specific legal exemption such as fair use. Although it is a good idea to give credit to the copyright holder, that alone will not protect you from an infringement complaint. Copyright is a part of federal law and anyone found guilty of copyright infringement may be subject to legal penalties. In addition, NMSU students, faculty, and staff may also be subject to university disciplinary action.

In sum, plagiarizing another's work is unethical; violating a creator's copyright is illegal.

- Plagiarism: What it is and how to avoid it

I like to make films and I have posted some online. I have incorporated other sources like background music, but I feel that the overall film is my own work. It looks like everyone else on YouTube is doing this too.

This is a good question...and a complicated area of the law.

Sites such as YouTube include many examples of video compilations or mashups that incorporate copyrighted work. When considering whether these are infringements or works that are protected by fair use, it is a good idea to apply a fair use analysis. Are you using copyrighted materials to create a work of commentary or criticism? Are you creating a parody? These are examples of uses that are protected as a fair use under copyright law. If you are posting someone else's movies or videos without adding anything, this is much more likely to be considered an infringement. For a thorough and thoughtful discussion of copyright, fair use, and online video, we recommend the *Code of Best Practices in Fair Use for Online Video* that is available through the Center for Social Media at American University: <http://centerforsocialmedia.org/fair-use>

You are correct that there are many videos with copyrighted material posted on sites such as YouTube. And, of course these online video sites frequently receive infringement complaints from copyright holders. YouTube's policies with regards to infringement allegations are available on their site and typically involve removing the material and notifying the account-holder of the complaint. YouTube also has a procedure for filing a counter-notification if you want to make a case that your use was not an infringement. See http://www.youtube.com/t/dmca_policy for more information.

- Code of Best Practices in Fair Use for Online Video (Center for Social Media at American University)
- YouTube's Procedure for Filing a Counter-Notification

We are creating a custom textbook for our entry level course. We want to use a critical thinking model introduced in Facione, P. A., & Gittens, C. A. (2016). Think critically. Boston: Pearson. We would only be using the basic framework for this methodology and aren't copying it straight from the source. And we will create

our own image of the model. We will reference the original, of course. Would we need to request permission to use?

You wouldn't need to request permission because you aren't making a copy and you are creating your own graphic to display the methodology. Your referencing the original work where the methodology can be found is enough.

There are several very instructive videos on youtube which I would like to (partly) show in class and/or share with students on Canvas because they could review and repeat important physics concepts. Here is a link to an example: <https://www.youtube.com/watch?v=jNc2SfIUJ9U>

Can I show this in class? Do I need to pay public performance rights? Can I add the link to Canvas so that students can watch it?

You can show YouTube videos in face-to-face classes. These types of "public performances" in non-profit, educational settings is an exception to copyright law found in 17 USC 110 (1) and applies as long as the movie was lawfully made/obtained. In other words, you show your own DVD in class, it's a DVD that you bought, or you show one from the library, which was also lawfully made and obtained. Just don't use a copy that you recorded from television or one that you copied from another DVD. That wouldn't be a "lawfully obtained or made" DVD. 17 USC 110 (1) only applies in "face-to-face classroom" settings. YouTube videos fall under that provision. And you don't need to pay public performance rights. As for posting the link in Canvas, that's also acceptable, as you are linking to the YouTube video, and not copying the video into your course. Here's a helpful and straightforward article about copyright and teaching with videos.

I was emailed by a person requesting a pdf copy of an article that I recently co-authored. I'd imagine the requestor's institution doesn't have a subscription to the journal. Does it violate any copyright or other regulations for me to send a copy of the article to an individual?

You found the article freely available on the National Institutes of Health website but it may not be the final edited version—it's the author manuscript version. So, if your requestor is happy with that link, send it on. You can send your final edited article to the requestor from the journal if your copyright agreement with the journal's publisher specifies personal sharing. It all has to do with your contract. And, if your contract specifies that the journal publisher retains all copyrights then, in the general, official sense, yes, it would be a violation of copyright to send the requestor the pdf. As I've already noted, you may have retained some rights and, it looks as though this was publicly funded research so it would fall under the Office of Information Technology (OIT) publicly funded mandate of mandatory public access. Which is why it is freely available from NIH.

Nevertheless, it's best to check your agreement with the journal publisher. You and your co-author may have retained some rights.