
Copyright & Fair Use in Academic Settings

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Copyright

- Article I, Section 8 of the Constitution: Congress has the power to “promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”

Copyright

- Copyright protects “original works of authorship” -- including emails, photographs, videos, blog posts, social media posts.
- In order to be protected, a work must be “fixed in a tangible medium” -- paper, canvas, clay, memory card, hard drive.
- Copyright lasts for the life of the author plus 70 years.
- Copyright holders have a number of exclusive rights, including the right to reproduce, distribute, and publicly display their works.

Copyright Ownership at UNC Charlotte

Governed by University Policy 315, "Copyright Policy"

Separately addresses Ownership rights of Faculty & EHRA employees, SHRA employees, Independent Contractors, and Students

Ownership rights of Faculty & EHRA employees who create subject works within the course and scope of their employment turns on

- whether the work was performed at the direction of University supervisors,
- whether the work was performed in collaboration with multiple University employees, or
- whether the work was created relying on a "exceptional use of University resources"

Faculty & EHRA Employees

Traditional or Non-Directed Works: Pedagogical, scholarly, literary, or aesthetic works by faculty or EHRA employees resulting from non-directed effort. (Employee owns copyright, with a NERF license to the University)

Directed Works: Directed Works are works that are specifically funded or created at the direction of the University. For a work to be considered a Directed Work under this Policy, a department chair or head of an administrative unit must inform the faculty or staff member in writing in advance of its creation that the work is a "Directed Work." Such funding need not constitute exceptional use of University resources in order for the work to be considered a Directed Work. (University owns with option of NERF to Employee)

Exceptional Use of University Resources: when the University provides support for the creation of the work with resources of a degree or nature not routinely made available to faculty or EPA non-faculty employees in a given academic department or administrative unit. Use of University resources is presumed not to be exceptional unless a department chair or director of an administrative unit informs the faculty member in writing before such resources are allocated that such use is exceptional. (University owns with option of NERF to Employee)

Sponsored or Externally-Contracted Works: any copyrighted work developed using funds supplied under a contract, grant, or other arrangement between the University and a third party, including a sponsored research agreement. (Employee owns unless sponsor requires otherwise)

SHRA Employees

“Work for Hire”: a work prepared by an employee within the scope of his or her employment or specially ordered or commissioned for use as a contribution to a collective work, where the parties expressly agree that the work is work for hire.

Independent Contractors

Generally, unless approved by the appropriate Vice Chancellor or Designee, the University owns works created pursuant to contract with Independent Contractors outright, as works for hire.

Students

Students retain ownership of copyright in their Student Works, with a NERF to the University.

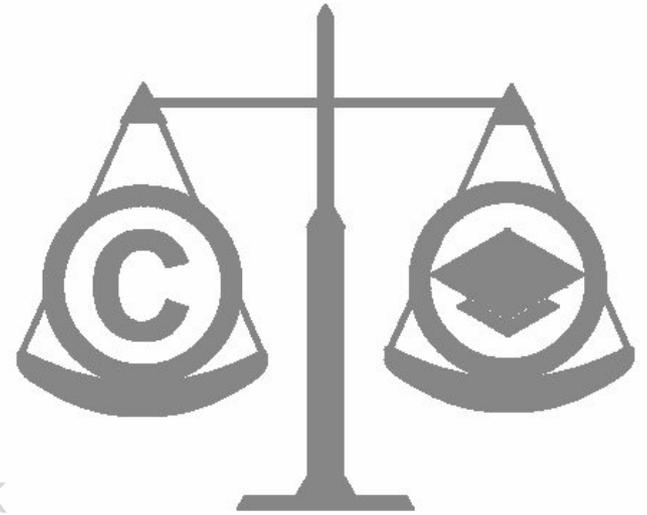
Students, however, do not retain ownership of works created during the course and scope of student employment--such works are regarded as Works for Hire.

Student workst that constitute notes of classroom and laboratory lectures and exercises *shall not* be used for commercial purposes.

Fair Use

Four Factors:

1. Purpose and character of the use
2. Nature of the original copyrighted work
3. Amount and substantiality of the portion used in relation to the copyrighted work as a whole
4. Effect of the use upon the potential market for or value of the original copyrighted work



Factor One: Purpose and Character of the Use

- Educational and nonprofit uses such as teaching, research, scholarship, criticism, commentary, parody, and reporting are favored under the first factor.
- Transformative uses are also treated favorably -- new purpose, different character, altering the original with a new expression, meaning, or message.



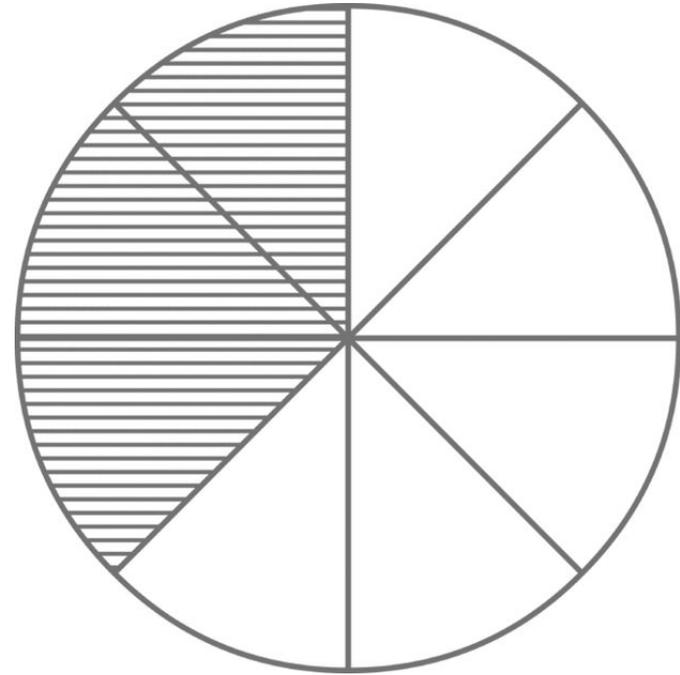
Factor Two: Nature of the Original Work

- Use of factual content such as nonfiction and news is more likely to be considered fair.
- Use of creative works and unpublished works is less likely to be considered fair.



Factor Three: Amount Being Used

- Use a small amount that is appropriate for a favored educational or nonprofit use.
- Both quantitative and qualitative.
- Possible to use the entire original and still be engaged in a fair use.
- This factor is rarely decisive.



Factor Four: Effect on the Market for the Original

- How significant is the effect of your use on the market for the original?
- Does the use simply replace a sale of the original copyrighted work?



Example 1: Bob Dylan Documentary



A group of students creates a documentary about Bob Dylan's anti-war activism, combining public domain government clips about the Vietnam War with clips from various Dylan songs that have anti-war themes. The students want to reveal how the lyrical content of the songs reflected Dylan's personal thoughts on the war and influenced the anti-establishment culture of the early 1960s. Is this a fair use of the songs?

Fair Use Factors:

1. Purpose and character of the use
 - Nonprofit, educational, transformative uses favored
2. Nature of the original work
 - Fiction/nonfiction, published/unpublished
3. Amount and substantiality of portion used in relation to whole
 - Use no more than needed; don't use the heart of the work
4. Effect on the market for the original
 - Replacing sale of the original?

Example 2: Survey Questions



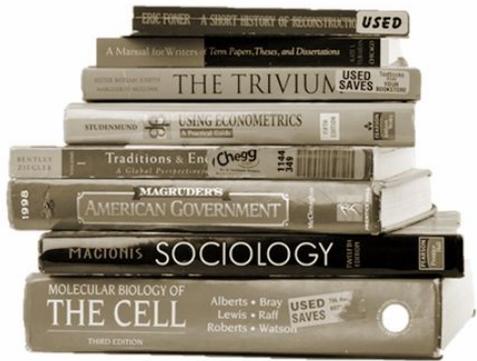
A graduate student creating an online health survey copies a few questions from studies previously published by Publisher, and alters the wording to better fit her research. She requested permission to use the questions from Publisher, but got no response. Student is not directly reproducing figures from the previously published study, but adapting and implementing individual questions, and plans to cite Publisher's studies as the origin of the altered questions. Is this fair use?

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Example 3: Textbook Copying

A professor, wanting to save her students money, scans an in-copyright Sociology textbook and posts it on the course canvas site. Is this fair use?



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Example 4: Comedic Blogger

A blogger downloads photos of suburban mansions from a commercial real estate website. The photos were posted by real estate agents from across the country. The blogger uses the photos to offer comedy-oriented tear-downs of architectural styles that developed in the suburbs in the 20th century. Is this a fair use of the photos?

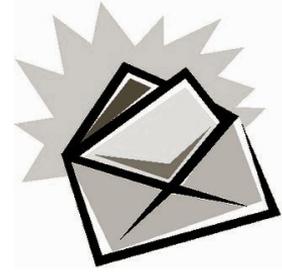
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Getting Permission



- Identify yourself and your institution (nonprofit, educational)
- Identify the portions of the work you want to use
- Describe your proposed use, including changes
- Describe any restrictions you'll place on the audience
- Request contact information for other rightsholders
- Offer to provide attribution, and ask for preferred format

Finding Openly Licensed Materials

- Creative Commons licenses:



- <https://creativecommons.org/licenses/>
 - Google advanced image search:
https://www.google.com/advanced_image_search
 - Google Scholar, institutional repositories

Questions?



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