

The Bling May Sting:

Considerations for the Lawful Use of Copyrighted Materials in Your University Work

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Will's Story

- ▶ Early in the fall of 2018, I took over a study abroad program from a colleague...and I inherited a promotional website in the process.
- ▶ There are lots of beautiful pictures of London! Most of them have limitations on usage. I did not verify that all the pictures on the website were free to use.
- ▶ Two years later, I received notice of a potential lawsuit. Thank goodness for Sam and Jesh.
- ▶ My takeaway from that experience: It's *so easy* to stumble into an issue of copyright infringement.

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.”

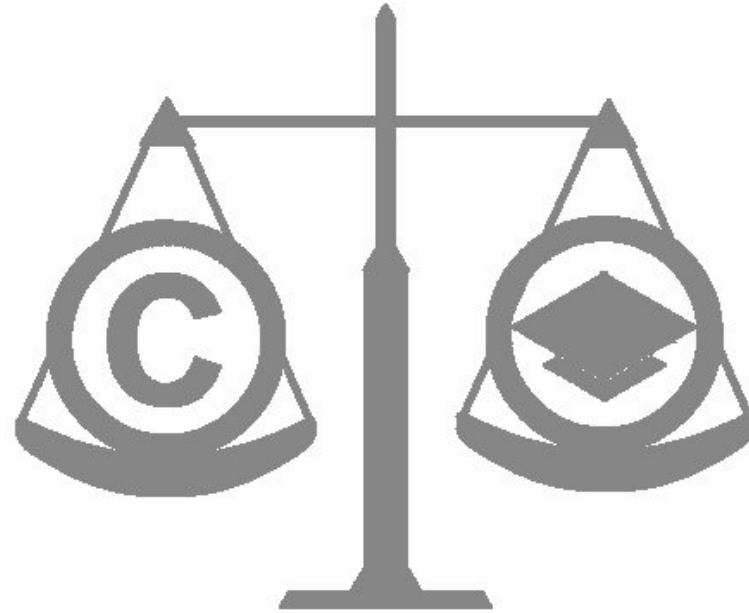
Copyright

- ▶ 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.

Fair Use

▶ **Four Factors:**

- ▶ Purpose and character of the use
- ▶ Nature of the original copyrighted work
- ▶ Amount and substantiality of the portion used in relation to the copyrighted work as a whole
- ▶ Effect of the use upon the potential market for or value of the original copyrighted work



Factor One: Purpose and Character

- ▶ 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.



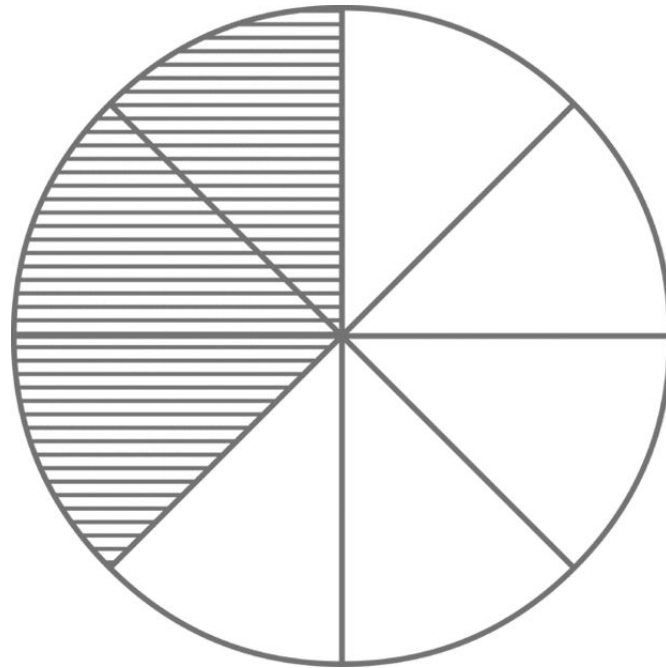
Factor Two: Nature of the Original

- ▶ 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

- ▶ 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?



Recommended Practices for Fair Use

- Use content that has a clear connection to your course objectives.
- Use only as much of the content as necessary for your use.
- If practicable, transform the copyright-protected content into a resource just for your course.
- Include copyright notices and attribution. Link to or include information about copyright.
- Give students information about their rights and responsibilities related to content in Canvas.
- Be cautious with materials designed for use in a course, for example textbooks, workbooks, and manuals.

Example: Collage Art



A collage artist uses works from other artists, which he combines with his own artwork to create new pieces of art. In one work, he takes an entire photograph from a book published by a photographer, and superimposes shapes and images on top of the photograph. **Is this fair use?**

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?

Cariou v. Prince



Example: Documentary Film

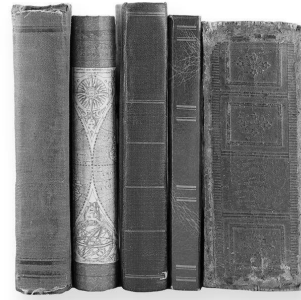


A group of students is making a documentary film to commemorate Martin Luther King, Jr.'s birthday. The film is about the history of the civil rights movement, and uses clips from many of King's speeches, along with clips of numerous rallies, protests, and demonstrations, to show how the movement evolved over time. **Is this fair use?**

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Example: Out-of-Print Book



A professor finds book at the library that is out of print and unavailable for purchase. It is an important work in her field of study, and is relevant to a course she is teaching. She would like to make a copy of the book to place on reserve at the library. **Is this a fair use? Does your answer change if she's putting the book in Canvas? On the internet?**

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Example: Fundraising Video



A local animal shelter is raising money and awareness for homeless animals by making a promotional video. In the video, volunteers dance and lip sync to ABBA's "Take a Chance on Me" while holding baby animals around the shelter. **Is this a fair use?**

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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 rights holders
- ▶ Offer to provide attribution, and ask for preferred format

Finding Openly Licensed Materials

- ▶ Subscription materials available through Atkins Library.
- ▶ [Niner Commons](#) and other institutional repositories
- ▶ [Google Scholar](#)
- ▶ [Creative Commons](#) licensed materials
- ▶ [Google Advanced Image Search](#)
- ▶ [Wikimedia Commons](#)
- ▶ [DOAB](#), [DOAJ](#)
- ▶ [Open Access Directory](#)
- ▶ Consider linking instead of copying!

Questions?



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