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LibGuide for Copyright

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I. Can I use this material in a paper/article/project ?

For materials from written **texts** to graphic **images** to recorded **music**, the answer is "Yes" if any one of the following applies:

1. The work is not subject to copyright
 2. Your use is within the guidelines for "fair use"
 3. You have permission from the holder of copyright.
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1. A work is not subject to copyright if :

- It was published before January 1, 1923.
- It was published before January 1, 1989, without a copyright notice.
- It was copyrighted before January 1, 1964, but the copyright was not renewed after the first term of 27 years. Copyright renewals may be checked at <http://comminfo.rutgers.edu/~lesk/copyrenew.html> or <http://collections.stanford.edu/copyrightrenewals/bin/page?forward=home>
- It was prepared by an officer or employee of the United States Government as part of that person's official duties.
- It was prepared by a Florida state government employee as part of his/her official duties.
- It is unpublished and its author/creator has been dead for 75 years.
- It consists of non-original materials (such as almanac data, timetables, calendars, etc.)

Simply copying or re-typing material is not enough to warrant copyright protection; there must be some degree of originality on the part of the creator.

Copyright does not apply to facts, but rather to the way those facts are expressed.

A title or short phrase cannot be copyrighted (although it may be trademarked).

Many times publishers will put a copyright symbol [©] on materials that are not legally subject to copyright. There is no penalty for this, but it is misleading and unenforceable.

A work that is not subject to copyright may be used in any way you desire.

In the case of recorded music, both the songwriter/lyricist and the performing artist have separate rights over the material.

2. Copyrighted materials can be used to a limited extent in accordance with the doctrine of "fair use."

Excerpts, summaries, reviews, quotations, or parodies are permitted.

There is no hard and fast rule for how much material "fair use" covers, but quotations of less than one page are generally acceptable.

If the borrowed material is "transformed" for a new beneficial purpose and new audience context, it is more likely to be considered fair use.

"Fair use" decisions consider four factors:

1. The nature of the work used: is it public and available or private and proprietary?
2. The nature of the use: is it educational, commercial, promotional, etc.?
3. The extent of material used: a few lines, a few pages, an entire work ?
4. The effect on the value of the original: will the use cause excessive economic harm to the copyright holder?

In general, use of reasonable amounts of copyrighted material for a required course paper or project at an educational institution will fall within fair use.

If the paper is to be published or the project widely distributed, then a more rigorous examination is appropriate.

If the work just repeats the borrowed material with the same intent and value, if it takes an excessive amount, or if it publishes an inappropriate type of material—then "fair use" is less likely to apply.

3. The copyright holder or delegated agent can give you permission to re-use material that is otherwise restricted by copyright.

For permission to re-publish substantial portions of a copyrighted work, contact the publisher's Permissions Department, and expect to pay a fee depending on the amount and nature of the re-use. They will want to know the extent of distribution, print run, or online availability.

Music: for published or distributed re-use of recorded music, the most comprehensive music licensing agencies are:

- BMI <http://www.bmi.com/>
- ASCAP <http://www.ascap.com/>
- SESAC <http://www.sesac.com/>

For **graphic images** by 20th- and 21st-century artists, contact the artist representative.

For **photographs** from an agency or wire service, contact the agency for license fees. "Royalty-free" images can often be purchased for a one-time fee that allows unlimited re-use.

Works published with a "**Creative Commons**" license may be re-used in accordance with that license; permission is automatically granted for most uses. See details at <http://creativecommons.org/>

If a work is co-authored, any co-author (or co-holder of the copyright) may give permission for re-use.

II. Can I use this material for teaching a course ?

The Copyright Act permits the "performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction."

The TEACH Act (**T**echnology, **E**ducation **A**nd **C**opyright **H**armonization Act of 2002) extends the permitted uses of copyrighted materials to include the digital storage and transmission to enrolled students in a course at an accredited educational institution.

This is interpreted as allowing copyrighted materials to be placed in Blackboard or similar course management software, so long as 1) access is limited to students enrolled in and instructors teaching the course; 2) the material is removed at the conclusion of the course; and 3) students are advised that copies of the materials may not be further distributed.

This applies to written and audiovisual materials, so long as those materials are not illegally obtained or copied.

So, an instructor may:

- Read, display, or perform a copyrighted work in class.
- Distribute a portion of a copyrighted work (but not the entire work) to students.
- Place a copyrighted work in limited-access course-management software.

Works that are not subject to copyright may be used in any way whatsoever.

III. How do I get/keep copyright protection for my work ?

Copyright of an original creative work belongs to the author/creator from the time the work is given "fixed form"; i.e. written down or recorded. So you own the copyright to your work as of the time of its composition.

You may take the further step of registering the copyright (or having a service register it for you), but this is optional. The reason to register a copyright is that in a lawsuit for copyright infringement, damages may be collected back to the time of the registration, but not before. Unless you anticipate suing someone and collecting monetary damages, there is little reason to register the copyright. Basic registration fees at the Copyright Office are \$35 (electronic) and \$50 (paper).

If your work is to be published, the publishers may require or attempt to require you to transfer the copyright to them. This is a contractual matter to be negotiated between you and the publisher. The publisher does not "need" to hold the copyright in order to publish; they may distribute the work under a "permission to publish" agreement that leaves ownership of the copyright in the author's hands. However, many publishers do insist on copyright transfer, but it is your decision whether to agree to that or not.

Some publishing agreements do not transfer the copyright, but do give the publisher exclusive publication rights, which amounts to the same thing; the author has ceded all control over the use of the material to the publisher, usually forever.

Some publishing contracts are non-exclusive, permitting the author to make further deals or arrangements for other sorts of publication. The ProQuest contract for dissertations that UNL PhDs are required to sign is of this type; it allows ProQuest to distribute (subject to the author's embargo instructions) and leaves the copyright and other publication rights with the author.

Some contracts, especially for journal articles, lay out the permitted uses that an author retains after transferring copyright or publication rights.

Read your publishing contract or copyright transfer agreement carefully and understand what uses you are giving up or retaining. Everything is negotiable before the contract is signed; nothing is negotiable afterwards.

The Office of Scholarly Communications recommends that you attempt to retain the right to post the article on your webpage and deposit it in your institutional repository (UNL DigitalCommons), in order to ensure the maximum possible dissemination, but this is entirely your decision.

Questions regarding copyright can be directed to Paul Royster, Coordinator for Scholarly Communications, UNL Libraries. Tel 402 472-3628; email proyster@unl.edu