



Copyright Q&A

INTRODUCTION

This Copyright Q&A has been developed by Ember Education’s Legal Department and is intended to provide general guidance to faculty, staff, and students of Carrington College, San Joaquin Valley College, and Santa Barbara Business College (collectively referred to hereinafter as the “Colleges”) on the use of copyrighted works, including the use of digital media. This document supersedes San Joaquin Valley College’s Copyright and Fair Use Guidelines dated 2008-9 and all other similar prior publications by the Colleges on copyright, but supplements the copyright policies found in the Colleges’ student and faculty handbooks and course catalogs.

The Colleges respect all rights of copyright holders and the materials that are protected by the [copyright laws](#) of the United States. Faculty and staff as well as students are expected to act responsibly in the use of copyrighted work in their academic endeavors. Permission must be obtained in all instances where faculty, staff, and students determine that their use falls outside of the copyright law exceptions or is not licensed.

If faculty and staff have specific questions regarding usage of copyrighted materials or if faculty and staff need help in obtaining copyright permissions, contact Ember Education Legal Department at EmberLegal@embered.com. Students are encouraged to seek advice from faculty and staff in their academic endeavors that involve copyrighted material. Faculty and staff may consult Ember Education’s Legal Department about student projects if further assistance is needed.

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GENERAL INFORMATION ABOUT COPYRIGHT

How do I Know if a Work is Copyrighted?

Copyright protection arises automatically the moment an original work is "fixed in a tangible medium of expression." In other words, the moment the text is written down or typed, or the moment a song is recorded, it becomes protected by copyright laws. The original creator of the work or, if transferred, the copyright holder holds exclusive rights (defined below) to their copyrighted works under 17 U.S.C. §106.

Since copyright protection happens so easily and lasts for so long, you should assume that any work you want to use is copyrighted. A work does not need to be registered, published, or contain a copyright notice to be protected. For works created in the United States, copyright protections last from the moment a work is created until 70 years after the death of the author, except for works produced by a company/employer in which case the copyright lasts 95 years from the date of publication. For example, works created prior to 1923 entered the public domain by 2019 and works created prior to 1924 are entering the public domain in 2020.

What are the Exclusive Rights in Copyrighted Works?

The exclusive rights granted to a copyright holder under 17 U.S.C. §106, grants the copyright holder the rights to do or authorize the following:

1. To reproduce the copyrighted work in copies or phonorecords (physical or digital format);
2. To prepare derivative works based upon the copyrighted work;
3. To distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
4. In the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
5. In the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
6. In the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

What is Public Domain?

A work is in the "public domain" if it is no longer under copyright protection or if it does not meet the requirements for copyright protection. Works in the public domain may be used freely without the permission of the former copyright holder. It is important to make the distinction that the phrase "publicly available" is not synonymous with the legal term "public domain." Today, there are so many works available to the public through the World Wide Web, but their availability does not diminish their protection under the copyright laws.

How do I Know if a Work is in the Public Domain?

There are four ways that copyrighted works come into the public domain:

1. The copyright has expired;
2. The copyright holder failed to follow copyright renewal rules;
3. Copyright law does not protect the type of work; or
4. The copyright holder deliberately placed the work in the public domain, which is known as a “dedication.”

Below are some questions that may be helpful in determining whether a work is in the public domain.

Has the copyright expired?

- Copyrights of all works published in the United States before 1923 have expired; the works therefore fall into the public domain.
- Works published after 1922, but before 1978, are protected for 95 years from the date of publication. If the work was created, but not published, before 1978, the copyright lasts for the life of the author plus 70 years.
- For works published after 1977, the copyright lasts for the life of the author plus 70 years.
- If the work was a “work made for hire” (i.e., performed in the course of employment) or was published anonymously or under a pseudonym, the copyright lasts between 95 and 120 years, depending on the date the work was published.
- If the work was published between 1923 and 1963, you are required to check with the U.S. Copyright Office to determine whether the copyright was properly renewed.

Has the copyright been renewed?

The U.S. Copyright Office has many helpful resources. Many copyrights can be searched online. If necessary, the U.S. Copyright Office will research renewal information at an hourly rate. Faculty and staff must seek permission from their campus leadership before incurring such fees. Students must cover their own expenses for this service.

Does the work display a copyright notice?

The presence or absence of a copyright notice (©) does not determine whether a work is protected by copyright. A copyright notice is not required for works published after March 1, 1989. In addition, for works published before 1989, the absence of a copyright notice may not affect the validity of the copyright. As a result, you cannot rely upon the absence of the © symbol to determine whether something is in the public domain.

Was the work produced by a U.S. government employee?

Any work created by a United States government employee or officer is in the public domain, provided that the work is created in that person's official capacity. This rule does not apply to works created by state and local government employees.

Did the copyright holder dedicate the work to the public?

Sometimes works have been dedicated to the public domain. This means the author or other copyright holder chooses to give up all rights in the work forever. This is often done online using a Creative Commons license. Unless there is express authorization placing the work in the public domain, you should not assume that the work is free to use.

What is Covered by Copyright and What is not Covered by Copyright?

Covered by copyright: Original creative works, whether created by a third party, faculty and staff, or students are all subject to copyright protection. These creative works can be shared both offline and online and can be in tangible or digital form.

Not covered by copyright: Copyright laws do not apply to facts, ideas, United States government documents, non-creative lists (*e.g.* list of phone numbers) or works in the public domain (*e.g.* works for which intellectual property rights have expired).

What is the Difference Between Attribution and Copyright?

Attribution and copyright share a common purpose—they both afford the original creator of a work protection in the use of his or her work. They differ in how they perform this function.

Attribution is more familiar to educators and students because of the issue of plagiarism. Attribution provides credit to the creator of a work. For example, when a work is licensed under a Creative Commons license, attribution is necessary to show who is the original creator of the work. Just like failing to give a proper citation to a quote is plagiarism, failing to provide attribution to a video, or other forms of digital media with a Creative Commons license is a violation of the terms of that license. (See the Q&A “What Is a Creative Commons license?”) Attribution is given in the form of a citation or bibliography.

Copyright gives the copyright holder control over the work and how it is used or distributed. Failure to obtain permission can result in copyright infringement. If a work is copyrighted, you cannot simply provide attribution to avoid copyright infringement.

COPYRIGHT OWNERSHIP

Who Owns the Copyright?

The copyright holder may be the original author(s) of the work. It may also be a third party, such as a publisher, producer, or employer. In some instances, it is almost impossible to determine, especially in regards to songs produced in the mainstream and Hollywood films.

What if a Faculty or Staff Member of one of the Colleges Created the Work?

Works authored by the Colleges' faculty or staff as part of their employment duties are owned by San Joaquin Valley College, Inc. ("SJVCi") pursuant to each faculty and staff's agreement with SJVCi. These works include but are not limited to course curriculum developed by faculty, academic textbooks drafted by faculty for academic and/or pedagogical purposes, and teaching aids. Unless otherwise noted on the material, materials authored by the College's faculty and staff may be used without obtaining permission.

What if a Student Created the Work?

Students hold the copyright to the works they create as part of their academic endeavors. This includes papers and projects as well as YouTube videos or other digital media. Privacy concerns related to the use of student work can also arise. Therefore, if faculty and staff wish to use or reproduce student work product, he or she must obtain written permission from the student. Faculty and staff should also be careful to review the student's work prior to use to ensure that the student's work does not contain any copyrighted content that is not licensed for commercial use, such as images or background music.

FAIR USE DOCTRINE

What is Fair Use?

Fair use is a judicial doctrine that allows limited use of copyrighted material without permission from the copyright holder for purposes such as criticism, parody, news reporting, research and scholarship, and teaching.

There are two fair use exceptions for using copyrighted materials that have been codified. The first exception is found at 17 U.S.C. §107, which is known as the general exception. The second is found at 17 U.S.C. §110(1) and (2), which are known as the exceptions for educational purposes. The differences between these two exceptions are discussed below.

What is the Difference Between the Fair Use Exceptions?

The general doctrine of fair use under 17 U.S.C. §107 may apply to your use, but the analysis is highly subjective. This doctrine is available to any member of the public in the United States, and requires, among other things, that your use be transformative of the original work. Transformative use means altering the appearance or nature of the work so much so that your use no longer is infringing. Thus, if your intended use is to present a song, film, or article in its entirety (e.g. copying an article for a class handout) or often even a portion thereof, your use will not be considered fair. (See Q&A: “How Do I Determine If My Use Falls Under the Fair Use Provision of 17 U.S.C. §107?”)

The exceptions found at 17 U.S.C. §110(1) and (2) are for educational purposes; however, for the reasons discussed immediately below, these exceptions are not applicable to faculty and staff’s use even if the use furthers educational purposes.

Since the Colleges are Educational Institutions, Doesn’t Fair Use Apply as Long as I am Using the Work for an Educational Purpose?

The fair use exceptions for educational purposes (17 U.S.C. §110(1) and (2)) do not apply to the Colleges because the Colleges are private, for-profit educational institutions. When researching about fair use, you should be careful to determine if the guide you are reviewing is for a non-profit educational institution as the analysis is different for a for-profit educational institution.

How do I Determine if my use Falls Under the Fair Use Provision of 17 U.S.C. §107?

Fair use is not an exact science. There is no formula to use and there are no prescribed amounts of use that will be considered fair. You may have heard people say that so long as you copy only a paragraph of an article to hand out to students or play a thirty (30) second clip of a film in your YouTube video, then it is considered fair use. This is misleading guidance. Even a three (3) second clip can constitute copyright infringement if that clip is considered the “heart” of the work.

In order to determine if your desired use falls under this provision or would constitute infringement, there are four factors that you must consider and weigh. Each factor will be a part of your analysis, keeping in mind this consideration: would a reasonable author consent to my use?

The fair use factors are as follows:

1. The purpose and character of the use;
2. The nature of the copyrighted work;
3. The amount of the work used; and
4. The effect of the use upon the potential market for the copyrighted work.

For further information about interpreting the above factors, you may wish to consult resources such as the U.S. Copyright Office's [website](#) or Georgetown University's [website](#). You should interpret these factors conservatively and if you believe your use is at all questionable, then faculty and staff should seek advice from Ember Education's Legal Department through their campus leadership or students should seek advice from their instructor. Remember that you have the burden to show that your use is fair.

What is Parody?

Parody is defined as “a literary or musical work in which the style of an author or work is closely imitated for comic effect or in ridicule.” (www.merriam-webster.com.) In very few cases will your use of a copyrighted work to create a parody fall under fair use, and it most certainly will not constitute fair use if it is used for any commercial purpose. Many parodies that you see have been created with permission from the copyright holder of the work parodied. Thus, Ember Education Legal Department strongly encourages you to seek permission to use a copyrighted work as the basis for any parody you wish to create.

DIGITAL MEDIA: VIDEO, FILM, & MUSIC

Can I Show YouTube Videos in the Classroom (Physical or Online)?

YouTube is a great resource for visual learning, but YouTube's standard Terms of Service state that YouTube only authorizes "personal, non-commercial use." This generally means that you cannot show a YouTube video in the physical classroom or copy it to an online platform without permission from YouTube and the copyright holder. It is always permissible and does not evoke copyright laws to provide a link to students for their personal viewing. The College's learning management systems will allow you to embed a link to YouTube, which is also permissible. An exception to this general rule is that some video creators grant a Creative Commons license that will allow you to use, share or build upon the original work.

What is a Creative Commons License?

A Creative Commons license is a type of license granted to the public to use, share, and build upon otherwise copyrighted work. The license generally allows for free distribution of the work, but each licensor chooses a set of conditions that you must consult before distributing. For example, a licensor may only allow for non-commercial use. The following types of Creative Commons licenses prohibit commercial uses: BY-NC, BY-NC-ND, BY-NC-SA. If prohibited, then you will need special permission to include the video on an online platform or to show it in class as your use in the classroom setting (physical or online) is for a commercial purpose. To learn more about Creative Commons licensing, visit its [website](#). Creative Commons' FAQs are also helpful for determining how you may use licensed material.

Where do I Find Videos With a Creative Commons License?

YouTube has a large collection of videos that are licensed under one of the Creative Commons licenses. Videos with a Creative Commons license generally may be shared on Brightspace, Canvas, or other password-protected/restricted sites that students can access, so long as: (1) you do not restrict students' access to further share the content, (2) you give the appropriate attribution, and (3) the terms of the license do not prohibit you from doing so. You may easily search for Creative Commons content on YouTube by following these steps:

1. Search the video keyword in the search bar of YouTube.
2. Click on the FILTER option.
3. You will see and click on "creative commons" located under the FEATURES heading.
4. Now you will only see videos that are covered by a Creative Commons license.
5. To confirm that any video has this licensing, you may open the video and click on the "SHOW MORE" option. You will see the type of license displayed.
6. You must confirm that the type of license granted allows commercial use.

You can also search for content on Creative Commons' [website](#).

Can I use Films or Clips From DVDs?

Some educational films, when purchased, may already have public performance rights but you must keep in mind that just because the film is educational in nature or produced by a non-profit organization, it does not mean that public performance rights are included. Commercial films, such as Hollywood-produced movies, are not purchased with public performance rights. Permission must be obtained separately for such films. The Colleges do not have a blanket license to permit the in class viewing of commercial films.

What About Showing Films Outside of the Classroom?

The showing of films for public viewing is not permitted unless specifically licensed with the copy purchased. In order to show a film, you must acquire public performance rights from the copyright holder. This includes but is not limited to educational films produced by PBS, Hollywood films, and documentaries. Typically, there is a charge for a public performance license depending on the work and the copyright holder.

Can I use Music in my Presentations (Business Presentations, Course Curriculum, or Student Projects)?

Faculty, staff, and students cannot use any unlicensed music in their presentations, which includes business presentations, student projects, and classroom instruction. This includes a recording of you performing copyrighted music. Using copyrighted music without permission is copyright infringement and giving attribution does not make the use legal (although it may be required pursuant to the terms of the license).

It is very difficult to obtain permission to use most commercial music. If you need sound effects or musical accompaniment for a film or presentation, there are resources for finding music for little to no monetary investment. For example, if you are using YouTube to create your video, YouTube has an audio library in its Creator Studio.

A couple words of caution. You must verify that the licensing terms fit your particular use. As mentioned above, a Creative Commons license may grant to the public the right to use the song, but it may prohibit commercial use.

Additionally, you should be mindful that a recording of a composition that is in the public domain may not be in the public domain. In other words, while the composition or arrangement may have entered the public domain because of its age, you may not have the right to use the recording or performance of it without express permission from the rights holder.

Again, it's all up to the licensing terms. If your desire is to use a tune to create a parody, please see the Fair Use discussion in this Copyright Q&A.

DIGITAL MEDIA: DATABASES, EBOOKS, AND ONLINE JOURNALS

Can I Provide Citations and Links to Articles From Online Journals or Full-Text Databases?

You may, but you should be very careful when linking to the articles and journals for others to view. You should use the “official URL” to link to an item, not the temporary “session URL.”

If the article or journal that you would like to share is from a database that requires a subscription, then you must comply with the terms of the license for the database. The Colleges have access to several online databases for online journals and eBooks for which students should use the credentials given to them by the Colleges for viewing.

For more information about the Colleges’ digital library resources or if you have any questions regarding their use, you may contact your campus librarian or librarian assistant.

What if I Obtained the Work From a Website?

Works from a website should be presumed to be protected by copyright. The World Wide Web is not the equivalent of public domain. If a work is published online with a statement that it is in the public domain, you will have to judge whether or not these claims are trustworthy, keeping in mind that such claims may not protect you or the Colleges should a copyright holder object to your use.

A good rule of thumb is that if the copyright laws prohibit you from distributing photocopies of articles, images, or other copyrighted materials, then you are prohibited from distributing an electronic copy of such materials to students. You may, however, encounter works online for which the author or creator specifically grants rights to use them, such as those released under a Creative Commons license. You will need to consult the terms of the license to determine how you may use or distribute such works.

DIGITAL MEDIA: IMAGES

What is Considered an Image?

Images include photographs, drawings, clipart, charts, maps, illustrations, diagrams, and more.

What is the Permissible use of Images in my Presentations?

Faculty, staff, and students may use images in their presentations so long as they are used in accordance with their licenses. If there is any question about whether an image is subject to copyright, it should be assumed that it is. In addition, whether it is free or purchased, the source of the images should always be credited.

As discussed above under Digital Media: Video, Film, & Music, copyrighted works that are licensed for use by a Creative Commons license are generally more accessible. The same is true for images. There are several digital images available that are governed by a Creative Commons license. You can search for these images on Creative Commons' website. Also, there are websites that offer free stock images with Creative Commons licenses, some of which are named below:

- StockSnap.io
- Unsplash
- Stock.Xchng
- Pixabay

Also, there are a number of websites where you can purchase licenses to use digital images. It should be noted that just like with the Creative Commons license, you should carefully review the license terms for the image to ensure that it provides you with the rights you require.

Below is a list of websites that offer images for purchasing:

- Getty Images
- Fotolia
- iStock
- Cutcaster
- Shutterstock

Faculty and staff should seek permission from their campus leadership before purchasing images or subscriptions on these sites. The Colleges may already have a subscription. Students may purchase images or subscriptions at their own expense.

What About Images I Find on Google?

Another resource of note is Google. "Google Images" is a search engine which finds images from across the web; they are not images owned by Google. You cannot download or use images from Google without seeking permission from the copyright holder unless your use falls under the Fair Use Exception or the image is distributed under an open license such as the Creative Commons license.

Google is merely a search engine that scans the internet and provides the searcher with any relevant results. It should not be assumed that copyright holders upload their images to Google for free use. If you click on the image you are usually guided to the source website where you may be able to obtain the necessary contact information for the copyright holder to seek permission.

Google is developing a feature that will display the licensing information available for an image and provide a link for more information. You must remember that Google does not make any representations as to whether an image is lawfully licensed. Before reusing content, you should make sure that the license is legitimate and check with the publishing website for the exact terms of reuse.

Is it Permissible to Modify an Image?

It is generally understood that you may not modify an image without permission. For more specific guidance you should review the terms of either the Creative Commons license or other paid license, which govern the use of the image.

PRINTED MATERIAL

Can I Scan Course Readings and Post Them to an Online Platform for Students to Read?

You may not scan course readings and post them to any of the Colleges' online learning platforms or other sites without express permission of the copyright holder. Materials posted on the internet could be viewed by people all over the world. This means you would be distributing the information freely and openly.

If you do request permission from the copyright holder to post the work, the copyright holder may require that you pay a licensing fee and limit access by password protection or some other method of encryption to protect against unauthorized access or illegal copying.

What About Copying a Worksheet or a Test for Students?

Tests and worksheets may also be under copyright, and you must get permission of the copyright holder to copy and distribute them to students if they were not purchased with a license to do so. Publishers often offer workbooks for sale and copying test and worksheets without permission affects the market for the materials.

If a Textbook Does not Arrive on Time, is it Permissible to Copy a Portion of the Text for Students?

Sometimes publishers will permit the Colleges to copy and share a limited portion of a textbook if it does not arrive on time. This permission is given on a case-by-case basis and will vary from publisher to publisher. You must consult and adhere to each publisher's terms for doing so.

REFERENCES

ConnectSafely, <https://www.connectsafely.org/copyright/>.

Creative Commons, <https://creativecommons.org>.

Georgetown University Library, <https://www.library.georgetown.edu>.

Merriam Webster Dictionary, <https://www.merriam-webster.com>.

The United States Copyright Office, <https://www.copyright.gov/title17>.

YouTube, <https://www.youtube.com>.