©Guide | What Can I Put in CTools? Ten Copyright Considerations

Technology evolves quickly; copyright law does not. Many things that are technologically possible and even commonplace may not be consistent with responsible use of copyrighted materials. Keep these basic considerations in mind when using CTools.

1. You may place a work in CTools that meets at least one of the following criteria:
   - you or the University hold the copyright in the work
   - you or the University have a license to use the work in your course
   - you have express permission from the copyright holder to use the work in your course
   - you have an implied license to use the work in your class - more on implied licenses below
   - you are making a fair use of the work - more on fair use below
   - the use you are making falls outside the copyright holder's rights
   - the work is in the public domain
   - the work is not copyrightable or
   - the work is not otherwise available

2. Assume that anything you can place into CTools (e.g. text, audio, video, images, charts, software, etc.) may be protected by copyright—until you determine otherwise.

3. Do not assume that you can freely use a work just because you intend to use it in an educational, non-commercial context.

4. Do not place a work in CTools solely because you think the work is too expensive for students to purchase.

5. If a particular work is not required for your course, avoid relying solely on the fair use criterion to place it in CTools.

6. Do not assume that you can use or store a particular work in perpetuity.

7. Always include (and never remove) copyright information associated with material you put into CTools. This applies to things like copyright notices that appear on books, articles, or other material. (You don't need to track down additional copyright information – you just need to include what appears.)

8. If you have the option, use a legitimate web link to a work, rather than copying the work into CTools.

9. Always use the authentication security system within CTools to limit access to the students, instructors, technical assistants, or specific visitors in your course.

The information presented here is intended for informational purposes and should not be construed as legal advice. If you have specific legal questions pertaining to the University of Michigan, please contact the Office of the General Counsel.
10. If you are unsure about whether you may place a work within CTools, take a look at www.lib.umich.edu/copyright for information about copyright or contact the University of Michigan Copyright Office, part of MPublishing and the University Library.

Common Questions

I have written many books and articles. How do I know if I am the copyright holder? I can copy things I’ve authored and put them in CTools for my students, right?

If you are the author or creator of the work, you still need to consult any contracts you may have signed for publication of the work to see whether you retained or transferred the copyright or to check to see if you reserved the right to make copies for your students. Consider using the Authors Addendum in your publishing agreements whenever possible to reserve rights that many scholars want to retain. For the greatest flexibility, think about publishing in Open Access journals. Take advantage of depositing your work in Deep Blue where it will be permanently preserved. Otherwise, generally you need to get permission from the publisher if you transferred or assigned your copyright without reservation. For more information on works authored at the University of Michigan please see the University of Michigan SPG 601.28 – Who Holds Copyright at or in Affiliation with the University of Michigan.

Can I copy material from a library into CTools?

Sometimes. Whether you can copy any particular work or a portion of a work for use in CTools has to be determined case-by-case and will depend on many factors (See the UM Library guide on Fair Use). That said, the University of Michigan Library purchases and licenses a multitude of content in all media for the University community. The licenses are subject to certain conditions BUT we ensure that materials we license are useable for educational purposes in the University of Michigan community whenever possible. In many cases, faculty should simply link to e-books or articles licensed by the Library for the use by students enrolled in a course. If there is something you want for a class or otherwise, contact a relevant subject matter librarian – they will do their best to help obtain it for your class or research project.

What is express permission to copy something?

Express permission means permission (preferably) in writing that addresses your particular use or that is so general as to include your intended use.

What is an implied license?

An implied copyright license is a license created by law based on the behavior of the parties where there is not written agreement. Implied licenses may exist where there is some understanding that one or both parties reasonably relies upon. Implied licenses contrast with express licenses - where the parties agree on specific terms in writing. Implied licenses can be influenced by custom and practice in some fields. For example, it may be implied for a commissioned work that the commissioning party can use the resulting work in the way presumed from the context of the
exchange or situation. Actions can speak louder than words: actions can be sufficient to create a license even where there is nothing explicit in writing. That said, it is advisable to preserve understandings in writing.

What is the public domain? Can I use public domain material in CTools?

The public domain refers to works that are not subject to copyright because the duration of copyright has expired, the copyright holder has placed a work in the public domain, or the work was never protected by copyright. Typically, copyright is for the life of the author plus 70 years but there are a number of variables that can apply. See Hirtle chart. The UM Library works to identify public domain books and make them available via the HathiTrust. See CRMS and HathiTrust sites.

The Internet has made the promise of the public domain an incredibly vibrant arena that allows people to build on one another's creative works in new and exciting ways. If a work is in the public domain, you may absolutely use it in CTools.

What kinds of things are not protected by copyright? Can I use those in CTools?

US Copyright law explicitly excludes the following from copyright protection:

- Facts and ideas
- Processes, methods, systems, and procedures
- Titles
- All works prepared by the United States Government
- Constitutions and laws of State governments.
- Materials that have passed into the public domain

While it is possible to assert copyright in a unique or original compilation of otherwise public domain or non-copyrightable works, the underlying public domain or non-copyrightable elements are not subject to protection. Creators often protect those interests with contracts or licenses that control the use of content in databases or compilations for example. That said, copyright is not recognized for 'sweat of the brow': works that are not original that still require great effort, expense, or expertise to produce, think of phone book white pages (not protectable) compared to yellow pages (may be protectable). Whether you can use any particular resource in CTools is a decision you have to make on a case by case basis.

There is a book that is out of print and not available for sale. Can I make a copy of it for my students to access in CTools?

If a book is out of print and not otherwise commercially available, it may be permissible to make a copy for access for students enrolled in a course via CTools. Keep in mind that out of print does NOT mean out of copyright. Seek permission for uses beyond the stated exceptions to the otherwise exclusive rights of copyright holders (like the limitations for fair use, teaching, and other situations described in Sections 107, 108 109, 110, and 121 of the US Copyright Act). For information on how to seek copyright permission please see our Library guide, Obtaining Copyright Permissions.
Does fair use apply to CTools?

While many educational uses may be fair uses, evaluate your use each time you reproduce copyrighted material: to show in your class, to hand out copies, to include in your writing, or to post on CTools. In general, it is advisable for faculty to maintain their selected material in the CTools environment for students enrolled in a particular class for the duration of the class. The fact that a use is for educational purposes alone is not sufficient to consider the use to be fair use automatically.

Fair use limits the rights of a copyright holder and 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 four factors to consider when determining whether your use is a fair use. You must consider all the factors below, even though all the factors do not have to be in favor of a use to make it a fair. The four fair use factors are:

1. The purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes;
2. The nature of the copyrighted work, such as whether the work is fiction or non-fiction, published or unpublished;
3. The amount of the work used in relation to the copyrighted work as a whole, such as using a poem in its entirety, or using one chapter from a long book;
4. The effect of the use upon the potential market for the copyrighted work.

For assistance in analyzing these factors for individual cases, take look at the Fair Use Evaluator provided by the ALA Office for Information Technology Policy at http://librarycopyright.net/fairuse/. Keep in mind that the fact that a particular use is for non-profit, educational purposes does not alone automatically make it permissible to copy or distribute other people’s work.

I came across some interesting material relevant to my class or project – the class is scheduled for tomorrow and I don’t have time to get permission. May I use the work in CTools for a short period so that we can discuss it in tomorrow’s class?

Fair use is fact specific. You have to apply all four factors in each case. It is likely though that your spontaneous use is fair use, say, if it is an article about a timely news event related to the course. If your use is spontaneous and unable to obtain the work otherwise in time frame needed for class, CTools is appropriate.

Of course, if the Library licenses the article, you should link to that copy rather than making another copy. In that case, you can leave the link in place independent of a fair use analysis.
I only want to put up two chapters from a book – its 20% of the book. Isn’t that small percentage fair use?

Fair use is fact specific. You have to apply all four factors in each case. There is no magical percentage that is always fair use. Sometimes copying a whole book or photo is fair use; sometimes a few lines of a poem or beats in a song are not fair use.

How do I know if I am allowed to use a work in a distance learning class?

The TEACH Act allows teachers and students at accredited educational institutions to use works for distance learning without permission under certain circumstances. If you:

• are an educator at an accredited educational institution,
• will supervise your students’ use of copyrighted materials,
• are using the material as an integral part of a class session,
• are using the material as an integral part of your curriculum, and
• are using the material that is directly related to and of material assistance to your teaching content

and plan to use copyrighted works in the following ways:

• performances of nondramatic literary works (i.e., a recording of a novel being read aloud);
• performances of nondramatic musical works (i.e., a recording of a symphony);
• performances of reasonable amounts of any work (i.e., an excerpt from a movie); or
• display of any work in an amount comparable to what would be used in a live classroom.

then your use aligns with the TEACH Act. For more help, see North Carolina State University's TEACH Act Toolkit, which gives more in-depth information about copyright and distance education. http://www.provost.ncsu.edu/copyright/toolkit/

Can I use something in CTools if it has a Creative Commons license on it?

If you want to put a Creative Commons licensed work into CTools, read the license and see if it’s permissible – in most cases it will be permissible. Of course you can also simply provide a link to the relevant material. Creative Commons is a non-profit organization that created a set of simple, easy-to-understand copyright licenses. These licenses allow creators to mark a work with permission to make a variety of uses, with the aim of expanding the range of things available for others to quote, adapt, and build upon. Creative Commons licenses do two things: They allow creators to share their work easily, and they allow everyone to find work that is free to use without permission. As long as you obey the terms of the license attached to the work, you can use Creative Commons licensed material without fear of accidentally infringing copyright. For more information, visit the Creative Commons website at http://creativecommons.org/. We encourage the use of Creative Commons licenses because they effectively help communicate information about copyright holders’ intentions and thus help everyone know with clarity what may be used and how – and what requires permission. Further, they allow you to know from whom to obtain permission. They are efficient and effective both for creators and users who want to respect copyright.
I want my students to watch certain movies as a required part of their class preparation. Can I make a copy available on CTools for them to view when and where they want as convenient as long as they don’t make another copy?

Generally it would not be acceptable to make a copy of a movie in this manner. It would be even less likely to be acceptable for ‘suggested’ material (as compared to ‘required’ assignments). Copying or streaming of movies for student or faculty convenience in the absence of a copyright right (such as fair use), permission, or similar arrangement is not permissible.

 Aren’t there some ways in copyright law to allow copying and streaming of movies and sound recordings (like music)? Do they apply to CTools?

There are some very specific and limited rights that permit circumvention of digital rights management software. The US Copyright Office at describes them:

http://www.copyright.gov/1201/

There are currently six classes of works that are not subject to the prohibition against circumventing access controls (17 U.S.C. § 1201(a)(1)) until the conclusion of the next rulemaking (occurs every three years). One of these permits the breaking of DRM as follows:

Motion pictures on DVDs that are lawfully made and acquired and that are protected by the Content Scrambling System when circumvention is accomplished solely in order to accomplish the incorporation of short portions of motion pictures into new works for the purpose of criticism or comment, and where the person engaging in circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of the use in the following instances:

(i) Educational uses by college and university professors and by college and university film and media studies students;
(ii) Documentary filmmaking;
(iii) Noncommercial videos.

Note that this exception is limited to ‘college and university professors and by college and university film and media studies students.’ The exception does not apply to other disciplines.