Copyright Office
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©Guide: Copyright and Course Websites

Web version: http://guides.lib.umich.edu/copyright-course-websites

Overview

University of Michigan policy allows instructors to make their own decisions about posting materials on course websites, such as Canvas sites. Often, those decisions involve legal questions about copyright. This guide aims to help instructors make decisions about what materials to post, and under what circumstances.

When to Use a Work on a Course Website

University of Michigan policy allows instructors to make their own decisions about posting materials on course websites, such as Canvas sites. Often, those decisions involve legal questions about copyright. The guidelines below are meant to assist instructors in making these decisions.

1. Only post a work on a course website if:

    1. The work is not copyrightable,
    2. The work has entered the public domain,
    3. The use you are making does not implicate any of the rights of the copyright holder,
    4. The use you are making is permitted by fair use or another user's right,
    5. You hold the copyright in the work, OR
    6. The use you are making is permitted by a license from the copyright holder.

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.

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2. Where possible, link to a legitimate online copy of the work instead of posting a copy of the work on your course website. US copyright law always permits you to link to a legitimate copy of the work hosted elsewhere, even when the work is protected by copyright. For instance, it is permissible to link to many of the electronic resources purchased by the library. If you need to use a licensed resource in a way that is not permitted by the license, contact a relevant library subject specialist. These librarians may be able to help you obtain library resources for your course.

3. If you post a copy of the work, always include (and never remove) copyright information associated with it. For instance, be sure to include copyright notices (the c in a circle symbol, ©, and any information following it) as well as authors' and publishers' names. You don't need to track down additional copyright information – you just need to retain what is already there.

Even when copyright law permits your use of a work, it may be illegal to circumvent copy-prevention technology in order to make that use. For instance, it is generally illegal, under 17 U.S.C. § 1201, to circumvent the Content Scramble System that restricts access to works on some DVDs. However, the US Copyright Office creates specific exceptions to this law every three years. For information about the current exceptions, please consult the 2015 Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies.

Using Uncopyrightable Works

Some materials do not meet the standards for copyright protection — they are uncopyrightable. Facts, ideas, titles, short phrases, and works prepared by an officer or employee of the US Government as part of that person's official duties all fall into this category.

Using such materials on a course website does not raise any copyright concerns. For more information about what is copyrightable, you may wish to consult the Copyrightability page of our Copyright Basics guide.

Using Works That Have Entered the Public Domain

Works that are not subject to copyright are in the public domain. They may be used without permission. In the United States, a copyrightable work is in the public domain if:

1. It was published before March 1, 1989 and did not comply with one or more of the required formalities. (Note: if the work was first published outside of the United States, copyright restoration may apply.)

2. The term of its copyright protection has ended.

3. Its copyright holder placed it in the public domain using the Creative Commons Public Domain Dedication.

Every country has its own rules about when a copyrightable work enters the public domain.

We recommend using Cornell's chart, Copyright Term and the Public Domain in the United States, and Berkeley's handbook, Is it in the Public Domain? to determine whether a particular work is in the public domain in the United States.

Please be aware that being in the public domain is not the same thing as being "publicly accessible." Many works that are freely available on the internet are still under copyright.

For more information about what is in the public domain, you may wish to consult the Duration & Formalities page of our Copyright Basics guide.

Using Works Without Implicating the Rights of the Copyright Holder

In most cases, posting a work that is protected by copyright to your course website will implicate the rights of the copyright holder. (You may still be permitted to post the work under a user's right, such as fair use.) The copyright holder's rights are not implicated if what you post is neither literally copied from nor a substantially similar to the original.

Also remember that, under US law, linking to a legitimate online copy of the work hosted elsewhere will not implicate any of the rights of the copyright holder.

For more information about the rights of copyright holders, you may wish to consult the Rights of Copyright Holders page of our Copyright Basics guide.

Using Works as Permitted by User's Rights

Copyright law gives users the right to use copyrighted material without permission under certain circumstances. These provisions are often called exceptions and limitations to copyright law. In the United States, they include fair use, certain uses during face-to-face teaching and distance education, and certain uses by libraries and archives.

Fair use is the broadest of the user's rights in US copyright law and the most likely to apply to uses of works on course websites. There are four factors to consider when determining whether your use is a fair one. You must consider all the factors, but not all the factors have to favor fair use for the use to be fair.

The four fair use factors are

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

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2. the nature of the copyrighted work;

3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

4. the effect of the use upon the potential market for or value of the copyrighted work.

Fair use favors "purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, [and] research." While many uses for educational purposes are fair, not all are. You need to evaluate your use each time you are reproducing copyrighted material — to show in your class, to hand out copies, to include in your writing, or to post on your course website. Because posting works on a course website often depends on fair use, another section of this guide is dedicated to frequently asked questions about course websites and fair use.

For more information about the rights of users, you may wish to consult the Rights of Users page of our Copyright Basics guide.

Using Works Whose Copyrights You Hold

If you are the copyright holder for a particular work, posting it to your course website does not raise copyright concerns. However, you may not hold copyright in all the works you have created.

Under US law, the initial copyright holder is the author of the work. In most cases, the creator of the work is considered the author. If two or more people make copyrightable contributions to a single work, they hold copyright jointly and are called joint authors. In the case of a "work made for hire," the author under copyright law is the person who employed or commissioned the creator of the work, rather than the creator of the work herself. If you are a University of Michigan faculty member and you created a scholarly work within the scope of your employment, the Regents have transferred the copyright back to you, subject to certain conditions and exceptions. Consult the University of Michigan copyright policy for further details.

If you are the author of the work under copyright law or are a University of Michigan faculty member who holds most of the copyright (transferred from the Regents) in a scholarly work, you still need to check that you have not transferred away your copyrights. For instance, it is common to transfer some or all of your copyright in a publishing agreement. If the work at issue has been published, you will need to consult your publishing agreement to see whether you can post it on your course website.

For more information about who holds copyright in a particular work, consult the Who Holds Copyright section of our Copyright Basics guide.

Using Works Under a License

A license is a grant of permission from the copyright holder. If a license permits you to post a work on your course website, doing so will not raise copyright concerns.

In some cases, the copyright holder may already have granted you a license. For example, Creative Commons licenses and open source software licenses allow copyright holders to grant permission to the world at large. For this reason, they are called public licenses. If the work you want to use is available under a public license, and your intended use complies with the terms of that license, you do not need to seek further permission. For more information about Creative Commons licenses, refer to our Creative Commons guide. There may also be a non-public license that covers your use of the work. For instance, many colleges and universities license sets of copyrighted works for use by their affiliates.

Another option is to seek permission for the specific use you are making. To do that, you need to identify the work's copyright holder(s) and contact them to ask for permission to use the work.

For more information about copyright licenses, you may wish to consult the Permission page of our Copyright Basics guide or our guide Obtaining Copyright Permissions.

Frequently Asked Questions About Fair Use and Course Websites

Does fair use automatically permit all educational uses?

No. Having an educational purpose weighs in favor of fair use. However, it can still be outweighed by the other fair use factors and subfactors.

If I have determined that it is fair use to use a work in one term, do I need to reassess fair use if I use the work again?

If any of the facts that impact the fair use analysis change, you should reassess fair use. For instance, the scope of fair use is broader if there is no way to license or purchase copies of a work. If copies or licenses become available, you should do a new fair use analysis.

Will limiting access to the work improve the fair use case?

In general, limiting access to the work will improve the fair use case. If possible, limit access to materials on your course website to students and necessary course personnel. Also, when appropriate, consider limiting the length of time a work is available on the course website in order to improve the fair use case.

Does fair use permit me to post library materials on my course website?

Sometimes. Whether fair use permits you to copy any particular work or a portion of a work for use on your course website has to be determined case by case based on the fair use factors. If the library resource you want to use is a licensed electronic resource, such as a ebook or an article database, your use of the item will depend on contractual terms in addition to fair use.

In general, it is best to link to those licensed items instead of posting copies on your course website. If you need to use a licensed resource in a way that is not permitted by the license, contact a relevant library subject specialist. These librarians can help you obtain library resources for your course. For example, a subject specialist may be able to buy a license for an ebook that allows a greater number of simultaneous users.

What if a work is out of print and not available for licensing? Does that improve the fair use case?

First, note that being out of print is not the same as being in the public domain. If you believe the work is in the public domain, you may wish to consult the public domain resources elsewhere in this guide before making a fair use analysis.

For in-copyright works, being out of print and unavailable for licensing will weigh in favor of fair use. Specifically, it will improve the fair use case under the fourth factor. However some uses of out-of-print and unlicensable works would not be fair. Be sure to consider all of the fair use factors when making your analysis.

What if I only post a small percentage of a work on my course website, such as one chapter from a twenty-chapter book? Does that improve the fair use case?

Using less of a work will generally improve your fair use case. However, there is no fixed percentage below which all uses are fair. Some uses of small amounts of works are not fair. Conversely, it can be fair use to use the entire work in some cases. Be sure to consider all of the fair use factors when making your analysis.

Should I document my fair use decisions? How?

It is not necessary to document your fair use analysis in order to rely on it later in court. However, keeping notes on your fair use decisions can make it easier to review them. That may be helpful if you want to review fair use decisions made by others (e.g., department staff and graduate student instructors) or if you will be using a work again and need to review your own fair use decision.

If you want to record your fair use analysis, we recommend the Fair Use Checklist from the Columbia Copyright Advisory Office. The Fair Use Checklist is also helpful as a guide for those who are learning to apply fair use.