



Copyright Office  
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# ©Guide: Know Your Copy Rights

Web version: <http://guides.lib.umich.edu/copyrightbasics/rights-of-users>

## Rights of Users

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 U.S., they include fair use, certain uses during face-to-face teaching and distance education, and certain uses by libraries and archives. Other countries have different rules about users' rights. [Module 4](#) of [Copyright for Librarians](#) provides an overview of the international landscape. It was produced by [Electronic Information for Libraries](#) and the [Berkman Klein Center for Internet & Society](#).

If your planned use implicates one of the rights of copyright holders and does not fall under a user right, you will need to [get permission](#) from the copyright holder or change your plans.

## Fair Use

Fair use allows certain uses of copyrighted material without permission from the copyright holder. 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;

*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. 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.

Fair use is codified at [17 U.S.C. § 107](#).

## Resources on Fair Use

- [Fair Use Checklist](#) This checklist from the Columbia Copyright Advisory Office helps users consider the factors and subfactors of the fair use analysis.
- [Codes of Best Practices in Fair Use](#) These codes document the shared best practices of communities that rely on fair use, such as the documentary filmmaking community and many scholarly communities.
- [Summaries of Fair Use Cases](#) This set of case summaries from Stanford is a good resource for learning about fair use law.
- [US Copyright Office Fair Use Index](#) This index of fair use cases is searchable by media format, case outcome, jurisdiction, and date. It is helpful for learning about legal precedents and judicial interpretation of the fair use doctrine.

## Face-to-Face Teaching

US copyright law permits teachers and students to make certain uses of copyrighted works in face-to-face teaching. As a teacher or student, you are allowed to perform or display a copyrighted work without permission in “a classroom or similar place devoted to instruction” during face-to-face teaching at a nonprofit educational institution.

If the work is a motion picture or other audiovisual work, you must use a copy of the work that was lawfully made.

This is codified at [17 U.S.C. § 110\(1\)](#).

## Distance Education

US copyright law gives teachers the right to use works for distance learning without permission under certain circumstances.

If you

- are, or are acting under direction or actual supervision of, an instructor in a class session offered by an accredited nonprofit educational institution or governmental body;
- are using the material as an integral part of a class session;
- are using the material that is directly related to and of material assistance to your teaching content; and
- are using a copy of the work that was prepared lawfully,

and the copyrighted work

- was not “produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks;” and
- will be transmitted solely to students officially enrolled in the course for which the transmission is made or officers or employees of governmental bodies as a part of their official duties or employment,

and your use is:

- [performing](#) a nondramatic literary work (e.g., reading a short story aloud);
- performing a nondramatic musical work (e.g., singing a song);
- performing a reasonable and limited amount of any other work (e.g., playing an excerpt from a movie); or
- [displaying](#) any work in an amount comparable to what would be used in a live classroom,

and your institution

- institutes a copyright policy;
- provides information about copyright to faculty, students, and relevant staff members;
- provides notice to students that materials used in connection with the course may be subject to copyright protection; and
- if the transmission is digital, applies the required technological measures,

then US copyright law permits your use.

This provision, which is sometimes called the TEACH Act, is codified at [17 U.S.C. § 110\(2\)](#).

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## **Libraries and Archives**

The US Copyright Act grants qualified libraries and archives certain rights to reproduce and distribute copyrighted works. These rights are codified at [17 U.S.C. § 108](#).

### **General requirements**

A library or archive qualifies for these rights if the

- reproduction or distribution is not for direct or indirect commercial advantage;
- the institution's collections are either
  - open to the public or
  - available to unaffiliated persons doing research in a specialized field; and
- the reproduction or distribution includes the work's copyright notice (or, in the absence of a copyright notice, a substitute statement).

In addition, these rights do not apply if the library or archives, or its employee, "is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple copies or phonorecords of the same material" or "engages in the systematic reproduction or distribution of single or multiple copies or phonorecords of material described in subsection (d): provided, that nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work."

### **Reproduction and Distribution for Preservation**

A qualified library or archives is entitled to make up to three copies of an unpublished work currently in its collection "solely for purposes of preservation and security or for deposit for research use in another" qualified library or archives, so long as any copy "that is reproduced in digital format is not otherwise distributed in that format and is not made available to the public in that format outside the premises of the library or archives."

A qualified library or archives is entitled to make up to three copies of a published work "solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored has become obsolete," so long as an unused replacement copy of the work cannot be obtained at a fair price and any copy "that is reproduced in digital format is not made available to the public in that format outside the premises of the library or archives in lawful possession of such copy."

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## **Reproduction and Distribution for Interlibrary Loan**

Upon request from one of its users or the user of another qualified library or archives, a qualified library or archives is entitled to make a copy of

- “no more than one article or other contribution to a copyrighted collection or periodical issue;”
- “a small part of any other copyrighted work;” or
- an “entire work, or . . . a substantial part of it . . . if the library or archives has first determined, on the basis of a reasonable investigation, that a copy or phonorecord of the copyrighted work cannot be obtained at a fair price,”

So long as:

- that copy becomes the property of the requesting user;
- the institution had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research;
- the institution displays a copyright warning in accordance with regulations from the US Copyright Office; and
- the work copied is not a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work other than an audiovisual work dealing with news.

## **Use of Works in the Last 20 Years of Their Copyright Terms**

During the last 20 years of a work’s copyright term, a library or archives is entitled to “reproduce, distribute, display, or perform in facsimile or digital form a copy or phonorecord of such work, or portions thereof, for purposes of preservation, scholarship, or research, if such library or archives has first determined, on the basis of a reasonable investigation” that

- The work is not subject to normal commercial exploitation;
- A copy of the work cannot be obtained at a reasonable price; and
- The copyright owner has not provided notice of the work being subject to commercial exploitation or available at a reasonable price.

These provisions are codified at [17 U.S.C. § 108](#).