A GUIDE TO COPYRIGHT
Based on A Guide to Copyright by the Purdue University Copyright Office and adapted with permission.

1. What is copyright?
Copyright is a form of protection provided by the law to the authors of “original works of authorship.” It allows authors to control the use of their works for a limited period of time. Once that time period has expired, the public is allowed to freely use the works without paying royalties or obtaining permission from the copyright holder.

2. What are the requirements for a work to be copyrighted?
The work must be an original work of authorship that is fixed (recorded) in a tangible medium. A work is protected from the moment of fixation. The word “Copyright” or © symbol is no longer required for works to be copyrighted.

3. How long does copyright protection last?
Works created on or after January 1, 1978 are protected for a term of the life of the author plus 70 years. If the work is a product of a corporate author, then the protection is for the shorter of 95 years from publication or 120 years from creation.

4. What can be copyrighted?
Eight categories of works are subject to copyright:
- Literary, musical, and dramatic works
- Pantomimes and choreography
- Pictorial, graphic, and sculptural works
- Sound recordings (including podcasts)
- Motion pictures and other AV works (incl. video clips)
- Computer programs
- Compilations of works and derivative works
- Architectural works

5. What cannot be copyrighted?
- Ideas, procedures, methods, systems, processes (but may be patented)
- Titles, names, short phrases, and slogans (but may be trademarked)
- Facts, news, objective research data
- Works produced by U.S. government employees
- Public records
- Works already in the public domain

6. What are the copyright holder’s exclusive rights?
- To make copies of the work
- To distribute copies of the work
- To create derivative works
- To publicly perform the work
- To publicly display the work

Publication usually involves granting part of the Author’s rights to another party, in which case the second party owns rights to the work.

7. What is the public domain?
- All works that never had copyright protection
- Works on which copyright has expired
- The work of federal employees in their official capacities
All works in the public domain are free for the public to use—but plagiarism, a separate issue, is still unethical and may be grounds for academic discipline.

MAJOR EXEMPTIONS
An author or owner’s copyright is limited by two major exemptions in the law that generally apply in institutions of higher education: the fair use exemption and the education exemption, which is further split into separate items for distance education and classroom teaching. Campus licensing agreements may limit application of exemptions.

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PROTECT YOURSELF
- Acquire legally obtained copies
- Use extracts or clips in classwork
- Ask permission
- Keep classwork in the class or portfolio

FURTHER INFORMATION
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Direct
- Did it yourself
- Intentional or unintentional

Contribution
- Knew or should have known of the infringement
- Materially contributed

Vicarious
- Benefited financially or professionally
- Had right and ability to control the infringement

COPYRIGHT IN CYBERSPACE
- Information available on the Internet is protected by copyright, but fair use and education exemptions exist in cyberspace as well.
- Free or easy direct access to Web pages or electronic files (including file sharing) does not put them in the public domain.
- Downloading and/or file sharing of video, audio, and other works may be considered copyright infringement unless it falls under the copyright exemptions or is authorized by the copyright owner.
- E-mail messages, blog postings, personal photos and home videos are works subject to copyright no matter on which site they appear.
Each member of the UT Martin community is responsible for weighing relevant factors and making reasonable and good-faith determinations whether or not a use fits within these “safe harbors.” The law holds individuals, not institutions, accountable for copyright infringement. By law, students and faculty are personally liable for court-assessed damages for copyright infringement; UT Martin is not. The University may impose penalties on infringers beyond court-imposed consequences.

— Fair Use Exemptions —

The fair-use exemption (17 U.S.C. § 107) allows the public to use copyrighted works under specific circumstances without paying royalties or obtaining permissions. A four-factor test is used by the courts in deciding whether a use is a “fair use.” The analysis balances the rights of the copyright holder with those of the public interest. All four factors must be considered. Permission can still be sought and granted by the copyright owner for a use that is not within fair use exemption.

**First Factor**
What is the purpose and character of the use (for what is something being used)?

<table>
<thead>
<tr>
<th>Favorable Uses</th>
<th>Nonprofit</th>
<th>Educational (used by instructor or student in instruction)</th>
<th>Personal</th>
<th>Criticism and comment</th>
<th>Scholarship and research</th>
<th>News reporting</th>
</tr>
</thead>
<tbody>
<tr>
<td>Favorable Permission</td>
<td>For a commercial venture</td>
<td>For-profit sale or distribution</td>
<td>Entertainment (public or private)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The relative weight given to each factor varies from case to case. If the balance weighs in favor of fair use, then a work can be used without permission. However, if the balance weighs against fair use and other use exemptions do not apply, permission must be obtained to use the work. The fair-use analysis must be applied to each use of a work. Fair use is technology-neutral, so the four factors may be applied to uses and works in any format.

— Education Exemptions —

Students have broad protection under the educational exemption while doing course work, but if student work does from others’ work, distributing that work beyond class may constitute infringement unless it falls under the fair-use exemption. Citation alone does not constitute educational use. Neither educational nor fair use justify plagiarism.

**Second Factor**
What is the nature of the work being used?

<table>
<thead>
<tr>
<th>Favorable Uses</th>
<th>Fact</th>
<th>Published</th>
</tr>
</thead>
<tbody>
<tr>
<td>Favorable Permission</td>
<td>Creative (original, unique)</td>
<td>Unpublished</td>
</tr>
</tbody>
</table>

**Third Factor**
How much of the work will be used?

<table>
<thead>
<tr>
<th>Favorable Uses</th>
<th>Small amount</th>
<th>Extensive amount</th>
<th>The core qualities or “heart of the work”</th>
</tr>
</thead>
<tbody>
<tr>
<td>Favorable Permission</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Fourth Factor**
What is the effect on the market for the original work?

<table>
<thead>
<tr>
<th>Favorable Uses</th>
<th>No effect</th>
<th>Licensing/permissions unavailable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Favorable Permission</td>
<td>Major effect on distribution</td>
<td>Made available publicly</td>
</tr>
</tbody>
</table>

In the fall of 2002 Congress revised the distance education exemption. The exemption is still divided into a performance category and a display category but with major changes. Instructors in accredited nonprofit educational institutions are allowed to transmit the following sorts of works, provided they meet all requirements listed below for instructors.

**Displays**
Displays of a static work may be shown only in amounts comparable to what is typically displayed in a live classroom setting.

1. Performances of musical and non-dramatic literary works.
2. Limited and reasonable portions of any other works (for instance, if only a three-minute clip is shown in class, a whole video cannot be posted for distance-ed students).

**Requirements for Instructors**
1. Transmission must be available solely for and limited to students officially enrolled in the course.
2. Must provide notice to students that materials used in connection with the course may be subject to copyright protection.
3. Performance or display must be made by, at the direction of, or under the actual supervision of the instructor.
4. The performance or display must be an integral part of a class session, which is offered as a regular part of the systematic mediated instructional activities (i.e., it happens in the actual classroom).

5. The performance or display must be analogous to what takes place in a live classroom setting.
6. The performance or display is directly related and of material assistance to the teaching content.
7. The instructor must use a lawfully made and acquired copy.

Instructors may not duplicate or transmit textbooks, course packs or other material in any media, copies or phonorecords (which includes CDs) which are typically purchased or acquired by students for their independent use and research that would be used in one or more class sessions. Also excluded from this exemption are works that are marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks.

Analog items cannot be converted into digital format unless no digital version is available to the institution. Any conversion of analog to digital is restricted to only the amount that is authorized to be displayed or performed as listed above. No further copies can be made from the digital copies.

10. Uses must apply technological measures that prevent digital transmissions from being retained longer than the class session.

**Infringement**
Infringement is nothing more than using copyrighted material for a purpose or in an amount that does not fall under an exemption specified in the law. "Anyone who, without the authorization of the copyright owner, exercises any of the exclusive rights of a copyright owner…is an infringer of copyright." Infringement is prosecuted and penalized on a personal, not institutional basis. The courts uphold exemptions but very few defenses against copyright infringement.

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