

A Discussion on Copyright

Center for Teaching and Learning



Get Ready

- ▶ How likely are you to use something “found” in your (unpublished) work only after seeking copyright status or permission?

- ▶ Respond at

PollEv.com/celinegreene

Or

Text CELINEGREENE to 22333 to join

- ▶ *If texting, after joining, text single response:*
 - A. Unlikely (never going to bother)
 - B. Perhaps
 - C. Somewhat likely
 - D. Usually
 - E. Always (will always extend the effort)
- ▶ *Clear response by texting ‘Undo’*

Is copyright a little fuzzy?

Which of the following IS protected by copyright?

- A. The data set of air temperatures recorded by a scientist at a remote weather station
- B. An infographic that displays America's gun homicide rate compared to the average of other developed countries
- C. The dream you had last night
- D. A title of a research article published in the *Journal of Vaccines & Vaccination*
- E. The logo of the U.S. Department of Health & Human Services

Is copyright a little fuzzy?

Which of the following **IS NOT** protected by copyright?

- A. An essay submitted by a student in course
- B. The U.S postage stamp (2003) of the Korean War Veterans Memorial
- C. A recorded interview between a community health worker and an activist
- D. An article in the *Telemedicine Journal and e-Health* accessed in the National Institutes of Health NCBI database
- E. Satellite images in the NASA Image and Video Library (<https://images.nasa.gov/>) that do not have an explicit notice
- F. Any image found online on a personal website, such as a blog

Terminology

Understand what is meant by... (1)

▶ **Copyright**

- ▶ Legal protection given to the creators of "original works of authorship" where the protected owner automatically has exclusive permission on the work's reproduction, distribution, derivative/adaptation, and performance/display rights. U.S. Copyright can be transferred and it also can expire (70, 95, or 120 years).

Anyone other than the copyright owner must either gain permission to use the protected work or use it under fair use.

- ▶ Protection extends* to:
 - ▶ the use of others' works – **both in physical and digital platforms** – in publications, in the classroom, in fieldwork, and the laboratory
 - ▶ **building on the works of others** to create new works
 - ▶ use and reuse of datasets and other **compilations**
 - ▶ the digitization of books in the public domain and **digital access** to works still in print
 - ▶ And more

*There are specific defensible exceptions, including Fair Use.

A note on International Copyright

Two principal international copyright conventions protect U.S. copyright and the U.S. protects foreign copyright law, reciprocally, only in [and for] the countries that have agreed to these agreements:

- **Berne Convention**
- **Universal Copyright Convention (UCC)**

“Protection against unauthorized use in any particular country depends on the national laws of that country.”

For current information on the requirements and protection provided by other countries, consult an expert familiar with foreign copyright laws.

Understand what is meant by... (2)

▶ **Copyright**

- ▶ Legal protection given to the creators of "original works of authorship" where the protected owner automatically has exclusive permission on the work's reproduction, distribution, derivative/adaptation, and performance/display rights. Copyright can be transferred and it also can expire (70, 95, or 120 years).

▶ **Copyright Infringement**

- ▶ A violation of the exclusive rights of a copyright holder.

▶ **Fair Use**

- ▶ A legal limitation on the rights granted by copyright *that is disputable*. It permits a person to copy ... based on four factors considered together: purpose, amount/sustainability, nature of the work, and the economic effect.

Factors of Fair Use: PANE



1. the **P**urpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. the **A**mount and substantiality of the portion used in relation to the copyrighted work as a whole;
3. the **N**ature (factual or creative) of the copyrighted work;
4. the [**E**conomic] effect of the use upon the potential market for or value of the copyrighted work

All 4 factors are considered when determining fair use!

Is copyright a little fuzzy?

Which of the following is the **BEST** example of something falling within Fair Use?

- A. Posting a copy of a PowerPoint slide from someone else's conference proceeding in your course's online library that depicts an infographic summarizing a research study. The slide directly relates to your learning objectives.
- B. Including a political cartoon from the New York Times in a slide for your recorded voice-over-PowerPoint lecture that will be posted to your online class.
- C. Distributing photocopies or projecting a scanned copy in class of an academic exercise found in a textbook that your students have not been required to purchase.

Understand what is meant by... (3)

▶ Copyright

- ▶ Legal protection given to the creators of "original works of authorship" where the protected owner automatically has exclusive permission on the work's reproduction, distribution, derivative/adaptation, and performance/display rights. Copyright can be transferred and it also can expire (70, 95, or 120 years).

▶ Copyright Infringement

- ▶ A violation of the exclusive rights of a copyright holder.

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▶ TEACH Act

- ▶ [2002] ... The number and severity of the limitations and conditions in the TEACH Act usually make it considered "obsolete".

▶ Open Source/Open Access

- ▶ Freely available works with direct access that are still fully protected by copyright unless explicitly designated as being in the Public Domain or otherwise licensed (e.g., Creative Commons, GNU Free Documentation...)

▶ Public Domain

- ▶ Works that are not restricted by copyright and do not require a license or fee to use because they're not copyrightable, are designated public by the creator, or because the copyright has expired.

Public Domain Examples

- ▶ Works for which copyright has expired or was never obtained
- ▶ Ideas, facts, words, names, slogans, short phrases (that aren't trademarked)
- ▶ Works that have been deliberately placed ("dedicated") to the public domain
 - ▶ *NOTE: usually there is an explicit statement of dedication*
 - ▶ E.g., Creative Commons 0 licensed works (other CC licenses still have protection)
- ▶ Works created by U.S. *federal* government employee or officer, "provided that the work was created in that person's official capacity"¹
 - ▶ *NOTE: This rule applies only to works created by federal employees and not to works created by state or local government employees. Also note, the U.S. government may hold the copyright of a work which is not necessarily in the public domain.*
- ▶ Other government works, including:
 - ▶ Judicial opinions
 - ▶ Public ordinances
 - ▶ Administrative rulings

¹ Stanford University Libraries. Copyright & Fair Use. *Welcome to the public domain*. (n.d.) Retrieved December 28, 2016 from <http://fairuse.stanford.edu/overview/public-domain/welcome/> (CC BY-NC 3.0 US)

UMUC Library. *Copyright and Fair Use in the UMUC Online or Face-to-Face Classroom*. . (n.d.) Retrieved December 28, 2016 from <http://sites.umuc.edu/library/libhow/copyright.cfm>

U.S. Government Works

“A government work is generally not subject to copyright in the United States and there is generally no copyright restriction on reproduction, derivative works, distribution, performance, or display of a government work.”

- ▶ Exceptions:
 - ▶ Works whose copyright belongs to a contractor or grantee
 - ▶ Works that may have restrictions in how they are used (e.g., publicity and privacy rights)
 - ▶ Copyrighted material assigned to the government

- ▶ NOTE: “You cannot use U.S. government trademarks or the logos of U.S. government agencies without permission.”

NOT Protected by U.S. Copyright

- ▶ Titles, names, short phrases, logos and other items typically considered for Trademark protection
- ▶ Ideas, procedures, and discoveries without a “fixed form” of notation or record
- ▶ Non-tangible expressions and acts without recordings or notation/documentation/performance scripts
- ▶ Stand-alone lists (e.g., ingredients, contents)
- ▶ Common property/information with no original authorship (e.g., conversion charts)
- ▶ All other works in the Public Domain

Review

Is copyright a little fuzzy?

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- C. The dream you had last night
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tinyurl.com/CTLcopyright1



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- E. Satellite images in the NASA Image and Video Library (<https://images.nasa.gov/>) that do not have an explicit notice**
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tinyurl.com/CTLcopyright2



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- C. Distributing photocopies or projecting a scanned copy in class of an academic exercise found in a textbook that your students have not been required to purchase.

tinyurl.com/CTLcopyright3



Select Cases

- ▶ ***US court grants Elsevier millions in damages from Sci-Hub***

Elsevier won a default legal judgement of \$15 million on June 21, 2017 “against websites that provide illicit access to tens of millions of research papers and books.” This included Sci-Hub, the Library of Genesis (LibGen) project and related sites.¹

- ▶ ***Georgia State E-Reserves Case***

Still being appealed, but 3 publishers had initially brought suit against 99 cases of infringement against GSU saying e-Reserves were being used in place of traditional (\$\$) coursepacks/texts. Several of the cases were dropped from the original set, but there remained over 70 under investigation. There were rulings in 2012 and 2014 and again in 2016. The last ruling (2016) found there were still 4 cases infringements.²

- ▶ ***ResearchGate Backs Down***

“The networking site, which enables researchers to easily upload and share their (sometimes publisher copyrighted) research papers, has been the target of publishers' ire for some time, but now it seems the situation has escalated, with some publishers threatening legal action.”³

- ▶ ***Saint Louis U. Threatens Faculty With Copyright Suit Over Campus-Climate Survey***

Faculty were dissatisfied with a 2013 survey distributed by the SLU Board of Trustees and wished to expand upon it, specifically in regards to the single question related to the university president (who had received a no-confidence vote by faculty and was supposedly the driving factor to the climate survey). The AAUP's chapter president (Harris) received a letter from the university's VP & general counsel saying that copyright of the surveys prohibited the faculty from making any derivatives. The letter seemingly threatened legal action (which was denied).⁴

- ▶ <https://www.copyright.gov/fair-use/fair-index.html>

1 Schiermeier, Q. (2017). US court grants Elsevier millions in damages from Sci-Hub. *Nature*. doi:10.1038/nature.2017.22196

2 GSU Library Copyright Lawsuit: Introduction. (n.d.). Retrieved 28 Jan 2018 from <http://libguides.law.gsu.edu/gsucopyrightcase>

3 McKensie, L. (2017). ResearchGate Backs Down. *Inside Higher Ed*. Retrieved 28 Jan 2018, from <https://www.insidehighered.com/news/2017/10/11/researchgate-bows-publisher-pressure-and-removes-some-papers>

4 Schmidt, P. (2013, April 2). Saint Louis U. Threatens Faculty With Copyright Suit Over Campus-Climate Survey. Retrieved 28 Jan 2018, from <https://www.chronicle.com/article/Saint-Louis-U-Threatens/138237>

Best Practices

- ▶ In summary – “it is best to attempt to identify rights-holders, to analyze your intended use and its potential impact on a rights-holder, and to seek permissions as needed for any work **that is not unquestionably in the public domain.**”
- ▶ Document:
 - Original sources
 - Notices and disclaimers
 - Intended use (reproduction, derivation, distribution, performance/display)
 - Your efforts and permissions sent/received



JOHNS HOPKINS

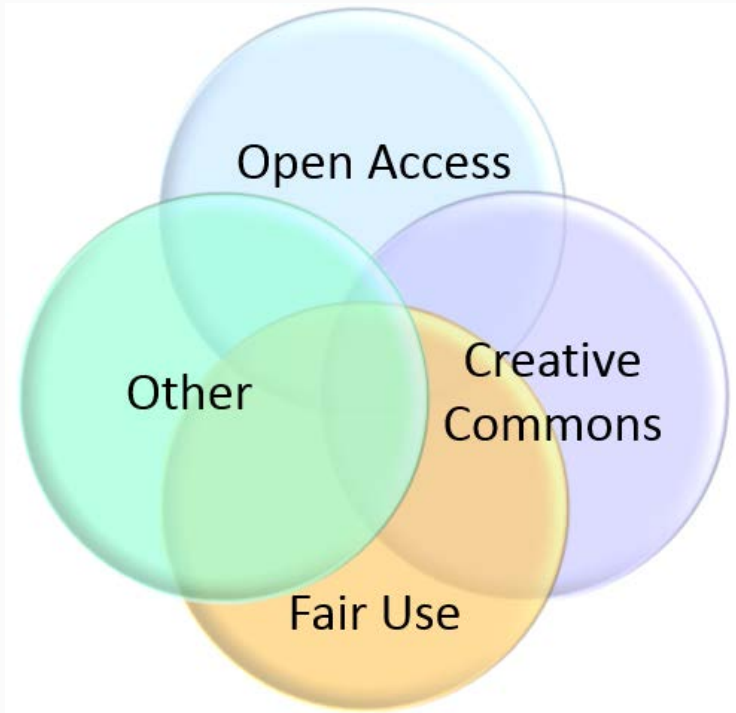
BLOOMBERG SCHOOL
of PUBLIC HEALTH



Using Copyright-Protected Work

Using Copyright-protected Material without Seeking Permission

Permissions Overlap



- ▶ These are the exceptions to asking the owner of a copyright for permission to reproduce, distribute, adapt, perform or display their protected work.
- ▶ What is permissible and the conditions for these privileges varies.

Open Access

- ▶ Open Access materials are still protected by copyright
 - ▶ Do not require specific copyright permission but may have restrictions on their use
- ▶ Common characteristics of Open Access:
 - ▶ Readily available
 - ▶ Free to obtain, public
 - ▶ Permissible to distribute, reuse, and/or adapt *with conditions*
- ▶ Conditions of reuse *may include*:
 - ▶ Required attribution
 - ▶ No derivatives
 - ▶ No commercial use

Creative Commons Licensed Work

- ▶ Creative Commons (CC) is a global organization that offers a popular licensing framework.
- ▶ CC licenses are copyright licenses, providing some or all usage rights
 - ▶ Do not require further permission requests
 - ▶ Standard licenses
- ▶ CC materials are still copyright-protected (“some rights reserved”)
- ▶ Variations of the CC license can include one or more of the following conditions:
 - ▶ Attribution to the copyright owner
 - ▶ Limits on derivatives (adaptations)
 - ▶ Limits on commercial vs. non-commercial use
 - ▶ Limits on sharing (distribute only under the same terms)

Open Access Licenses (*other than CC*)

- ▶ Free Art License (<http://artlibre.org/licence/lal/en/>)
 - ▶ “The main rationale for this Free Art License is to promote and protect these creations of the human mind according to the principles of copyleft: freedom to use, copy, distribute, transform, and prohibition of exclusive appropriation.”
- ▶ GNU Free Documentation License (<https://www.gnu.org/copyleft/fdl.html>)
 - ▶ Freedom to modify, copy, and redistribute – commercially or non-commercially
 - ▶ Preserves author/publisher attribution of original work
 - ▶ Derivatives must be shared with same license (“share alike”)
- ▶ Learn more: Open Definition’s *Guide to Open Licensing* (<http://opendefinition.org/guide/>)

Attribution is NOT a Substitute

- ▶ *Attribution is NOT a substitute for copyright permission. It is an ethical matter first; sometimes a requirement for permission.*
- ▶ Attribution should:
 - ▶ Name the author/creator/owner
 - ▶ Give the title or description
 - ▶ Provide URL, doi, or other source
 - ▶ Indicate type of license, linking to terms (or providing URL of terms)
 - ▶ State any copyright notice
- ▶ Respect any specific attribution requests
 - ▶ E.g., Please use the following source credit when reproducing an Open Content image:
“Digital image courtesy of the Getty's Open Content Program.”
(<http://www.getty.edu/about/whatwedo/opencontent.html>)

Special Conditions

- ▶ Make sure to look for and read any special terms – even for CC licenses – before using copyright work
- ▶ “Conditions of Use” examples:
 - ▶ “These resources and materials may not be downloaded in order to mount them on another server for public use, or for a use by a set of subscribers.” (<https://spec.lib.vt.edu/policies/conditions.html>)
 - ▶ “Unless otherwise noted, the Works may not be used for any commercial purpose without written permission from the JCU Library” (<https://www.jcu.edu.au>)
 - ▶ “The AMS copyright notice must be displayed on the first page of any AMS copyrighted work that is published in print or on the first screen of a digitized work (such as a website). It is acceptable to place the string ‘© Copyright [date of publication] AMS’ as a hypertext link to the full copyright notice.” (<https://www.ametsoc.org>)
 - ▶ “Adaptations—If you create an adaptation of this work, please add the following disclaimer along with the citation: This is an adaptation of an original work by FAO. Views and opinions expressed in the adaptation are the sole responsibility of the author or authors of the adaptation and are not endorsed by FAO.” (<http://www.fao.org/contact-us/terms/en/>)

Example 1

- ▶ Alt text = *Prevalence of tobacco use by sex, in select Member States of the Region. See source for full description.*

Member Countries	Age	Smoking (%)		Smokeless (%)	
		Male	Female	Male	Female
Bangladesh	15+	44.7	1.5	26.4	27.9
India	15+	24.3	2.9	32.9	18.4
Indonesia	15+	63.1	4.5	N.A.	N.A.
Maldives	25–64	37.5	11.8	N.A.	N.A.
Myanmar	15–64	44.7	7.8	51.4	16.1
Nepal	15–64	34.5	15.9	31.2	4.6
Sri Lanka	15–64	29.8	0.4	24.9	6.9
Thailand	15+	45.6	3.1	1.3	6.3

Source⁸

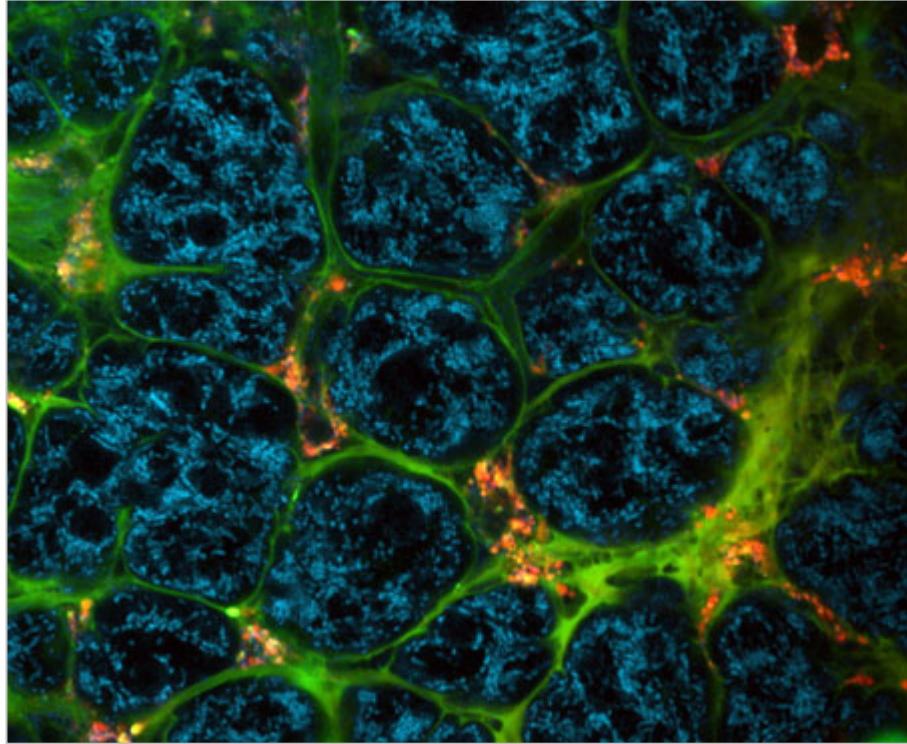
Thakur J S, Garg R, Narain J P, Menabde N. *Tobacco use: A major risk factor for non communicable diseases in South-East Asia region*. Indian J Public Health 2011;55:155-60. doi: [10.4103/0019-557X.89943](https://doi.org/10.4103/0019-557X.89943). [CC BY-NC-SA 3.0](https://creativecommons.org/licenses/by-nc-sa/3.0/)

Example 2



Shinichi Suzuki. *Preparing Tobacco Leaves*. [Hand-colored albumen silver print]. (about 1873 – 1883). Retrieved January 30, 2017, from <http://www.getty.edu/art/collection/objects/163886>. Digital image courtesy of the Getty's [Open Content Program](#).

Example 3



Masedunskas, Andrius. *Rat Salivary Glands (3)*. [Low resolution photograph] Retrieved January 30, 2017, from <https://www.nidcr.nih.gov/imagegallery/science/RatSalivaryGlands2.htm>. Digital image courtesy [National Institute of Dental and Craniofacial Research](https://www.nidcr.nih.gov/).

Special Cases

STM Permissions

- ▶ STM Permissions Guidelines allows limited amounts of materials to be used in published works by other member companies without a costly request.

...The Guidelines note that requests for small portions of text and a limited number of illustrations should be granted on a gratis basis for signatory participants, and further describe a more automatic process which eliminates the need for requests to be transmitted (some signatories have chosen this route, others continue to request express permission requests). The Guidelines apply to both book and journal content, and facilitate reproduction further editions or in other media such as in online form.

- ▶ Members include *American Chemical Society, Cambridge University Press, Elsevier, Future Science Group, Medical Sciences International Ltd (MEDSi), Oxford University Press, and many more*

Requesting Permission

Requesting Permission: What

A “nonexclusive” permission may be granted by telephone or handshake, but an “exclusive” permission or a transfer of the copyright must be in writing and signed by the copyright owner. In all cases, a clearly written document with a signature is useful to confirm exactly what is permitted.¹

While written permission with a signature is ideal, make certain to document (or archive) any form agreement. Keep a copy of all correspondence.

¹ *Permissions and Licensing: Asking For Permission* (n.d.). Columbia University Libraries. Retrieved December 19, 2016, from <https://copyright.columbia.edu/basics/permissions-and-licensing.html>

Requesting Permission: From Whom

- ▶ Look for notices of clearinghouse (“collective rights organization”) or other contact
 - ▶ Copyright Clearance Center, Copyright Licensing Agency (UK), Access Copyright (Canada), etc.
 - ▶ Commercial photography sites, image archives
 - ▶ Permissions department
 - ▶ Copyright owner – NOT necessarily the author
- If you can't determine the copyright owner, consider:*
- Ulrich's Web (<https://ulrichsweb.serialssolutions.com/>)
 - U.T. Austin's Harry Ransom Center & University of Reading Library's *Writers Artists and Their Copyright Holders (WATCH) and Firms Out of Business (FOB)* database (<http://norman.hrc.utexas.edu/watch/>)
 - Or even not using the source (These are often considered orphan works)

Requesting Permission: How

- ▶ Look for specific instructions, e.g.:
 - ▶ Contact via online interactive form, downloaded form to be mailed, email, phone, or fax
 - ▶ What you must specify in your request
 - ▶ Associated costs

- ▶ Be ready with introduction:
 - ▶ Who you are
 - ▶ Your affiliation
 - ▶ Nature of your project

- ▶ Letters should include
 - ▶ Introduction (who you are, affiliation)
 - ▶ Why (if not obviously the copyright holder, explain why you're contacting the individual)
 - ▶ How (nature of project, how you plan to use the work – non-commercial?, any requests for sharing under your own license)
 - ▶ Where (online – protected or public access?, print, video)
 - ▶ When (how long you plan to use it)

Record Keeping

- ▶ Determine best method to document your gathered sources
 - ▶ Spreadsheet (Google Sheet, Excel, etc.)
 - ▶ Zotero (<https://www.zotero.org/>)
 - ▶ Mendeley (<https://www.mendeley.com/>)
 - ▶ Noodletools (<http://www.noodletools.com>)
 - ▶ Other

- ▶ Collect:
 - ▶ Author/Artist/Creator/Publisher
 - ▶ Owner of copyright (if different)
 - ▶ Citation information (depends on content)
 - Title
 - Source (URL)
 - DOI (Digital Object Identifier)
 - Metadata (e.g., image size)
 - ▶ Date Accessed
 - ▶ Copyright license
 - ▶ Date copyright permission request sent
 - ▶ Date permission granted & archived location of correspondence
 - ▶ Notation of any special conditions of use

On Digital Object Identifiers

- ▶ DOIs are absolute and unique
- ▶ Usually found near copyright statement, on first page of journal article, “source” page citation statement
- ▶ DOIs can be used to access source data
 - ▶ References/Bibliography
 - ▶ Accessibility purposes
 - Data sets
 - Long descriptors

Conclusion

Learn More

- ▶ Copyright Clearance Center
 - ▶ Copyright Basics
 - ▶ Copyright on Campus
- ▶ CTL Teaching Toolkit
 - ▶ Search “Copyright”
- ▶ Johns Hopkins University Policies
 - ▶ JHSPH Faculty Handbook *Policy on the Ownership and Use of Copyrightable Materials*
 - ▶ Intellectual Property Policy