

# Legal Concerns Re. Using Images in Your Work

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- make copies of a protected work (**reproduction** rights)
- sell or otherwise distribute copies to the public (**distribution** rights)
- create derivative works (**adaptions**)
- perform a protected work or display a work in public (**performance and display** rights)

Anyone other than the copyright owner must either gain permission to use the protected work, including a clearly stated permission or license, or use it under fair use.

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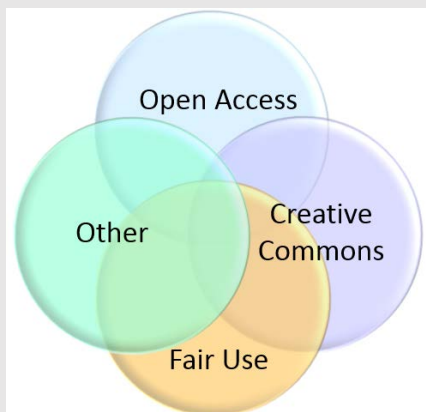
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## Using Copyright-protected Material Without Seeking Permission

### PERMISSIONS OVERLAP



If a work is not obviously in the Public Domain, then there are certain situations where you may be able to use or adapt the material. Open Access, Creative Commons licenses, terms of Fair Use, and other considerations overlap each other as exceptions to asking the owner of a copyright for permission to reproduce, distribute, adapt, perform or display their protected work.

What exactly is permissible (e.g., derivations, distribution) and the conditions (e.g. attribution) for these privileges varies.

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“Open Access” is a term that describes the ability to get a full resource (e.g. document, file, article, or image) without cost and without providing any information. Sometimes, this is *misinterpreted* as “open licensed” (to reuse, make derivatives, etc. without permission as long as attribution is given – bypassing any potential copyright restrictions). However, Open Access materials are **still protected by copyright**. These materials often do not require you to request specific copyright permission, but they may have restrictions on how they are being used. Always look for these permissions and restrictions when considering Open Access materials.

Common characteristics of Open Access materials:

- 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

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- 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)

### FAIR USE

Fair Use is an argument as to the limitations of copyright protection. The practice refers to when you *judge* that you can legally use copyright-protected work without specific permission from the copyright holder towards a means of your own freedom of expression. It is an argument and not a clear-cut permission, which itself could only be determined by a legal proceeding.

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The [four factors of fair use must always be considered together](#). If your specific use of a material weighs heavily in favor of these factors, then there is a strong likelihood you’re working within the “terms of fair use”.

1. the **purpose and character** of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes – *nonprofit and educational is considered more favorable*
2. the **amount and substantiality** of the portion used in relation to the copyrighted work as a whole – *not using an entire work and not using the “heart” of the work is more favorable, as is the semi-permanence (considering format and distribution) of your use*
3. the **nature** of the copyrighted work – *reusing or adapting factual, published content (without any sort of unique display) is more favorable*
4. the **economic effect** of the use upon the potential market for or value of the copyrighted work – *identify the rights-holders in considering the potential impact.*