



Title: NRAO Library Copyright and Open Licensing Policy	Author: K. Davis	Date: 03/29/2022
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NRAO Copyright and Open Licensing Policy

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I INTRODUCTION

Copyright and Fair Use

The NRAO Library supports the federal laws governing Copyright and Fair Use of all materials and formats, as set out in the 1978 Copyright Act, the 1998 Digital Millennium Copyright Act and the 2001 TEACH Act.

By its nature, this guide provides a general, and necessarily limited, discussion of various topics; it does not purport to give specific legal advice.

2 BASICS OF COPYRIGHT

- What is copyright?
- Why is copyright necessary?
- What can be copyrighted?
- What does copyright protect?
- What does a copyright authorize the copyright owner to do, or to restrict others from doing?
- Who owns the copyright?
- Can a copyright be transferred to someone else?
- How does a work become copyrighted?
- Should I include a copyright notice or register the copyright in my work?
- Can I avoid infringement by crediting the source?
- When do copyrights expire, and how can I determine if an old work is still covered by copyright?
- Does a copyright expire when a work goes out of print?
- How do I get permission to reproduce or disseminate someone else's copyrighted work?
- What happens to copyright in cyberspace?
- What should I be aware of when I create a website?
- What about linking to other material?

Basics of Copyright

What is copyright?

Copyright is the lawful right of an author, artist, composer or other creator to control the use of his or her work by others. Generally speaking, a copyrighted work may not be duplicated, disseminated, or appropriated by others without the creator's permission. The public display or performance of copyrighted works is similarly restricted.

There are exceptions to this rule—notably the fair use doctrine discussed in the following Section—but generally the unauthorized use of a copyrighted work is copyright infringement, and may subject the infringer to civil and criminal penalties under federal law.



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The present Copyright Act dates from 1978, but copyright is an ancient doctrine, with its roots in Elizabethan England. The framers of the Constitution authorized Congress to "promote the progress of science and the useful arts, by securing for limited times to authors . . . the exclusive right to their respective writings . . ." Today, copyright law goes far beyond "writings" narrowly construed. It extends to literary, dramatic and artistic works, musical compositions and computer programs.

Why is copyright necessary?

On the other hand, we want society as a whole to benefit from new ideas and information, and so copyright protection is limited. Copyright protects only the form in which ideas and information are expressed. Copyrights expire after a certain period of time. And the law allows certain limited uses of copyrighted material by others, without the creator's permission. The most important such use is "fair use," which is discussed in the next Section.

What can be copyrighted?

Broadly speaking, one can copyright any original work of authorship that can be "fixed in any tangible medium of expression," such as written on paper, or encoded on disk or tape, or recorded on film. This includes fiction and nonfiction writings, poetry, musical compositions (words and music alike), sound recordings, photographs, paintings and drawings, sculpture, architectural works, databases, audiovisual works such as movies, and multimedia works such as those on compact discs. Computer programs can be copyrighted, and almost always are. Unless a program is clearly denoted "freeware," you should assume it is subject to copyright protection.

Unlike a patent, the degree of creativity necessary to qualify for a copyright is very modest. Virtually any original work—even a casual letter, or a compilation of information that involves some originality in selection or arrangement, such as a directory, an anthology, or a bibliography—can be copyrighted.

What does copyright protect?

Copyright does not protect ideas, nor does it protect facts. It protects only the form in which ideas or facts are expressed. For example, you may read a copyrighted paper and appropriate its ideas, or facts it conveys, into your own work without violating the copyright. However, you may not reproduce the actual text of the paper (unless fair use or another exception to copyright protection applies), nor may you evade this prohibition simply by changing some words or thoroughly paraphrasing the content.

What does a copyright authorize the copyright owner to do, or to restrict others from doing?

Subject to certain limitations, a copyright owner has the exclusive right to:

- reproduce the work by making copies of it;



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- distribute copies of the work to the public by sale, donation, rental, or lending;
- prepare new works derived from the original (for example, a novel adapted into a play, or a translation, or a musical arrangement); and
- publicly perform or display the work.

Anyone who does any of these things without authorization infringes the copyright and can be liable to the copyright owner for damages. In some cases, in lieu of proving actual damages, the copyright owner can recover statutory damages of up to \$30,000, or up to \$150,000 if the infringement was willful, for the infringement of a work. Infringement can also be a crime, punishable by fine or imprisonment.

Who owns the copyright?

Ordinarily, the creator does. However, if he or she creates the work in the course of employment or is retained under an appropriate contract to make the work, then the work is a "work made for hire," and the employer or the contracting party owns the copyright. Co-creators jointly own the copyright in the work they create together.

In some situations, when a work is created by a member of the University, Harvard policies vary the ownership that would otherwise result under copyright law. For example, faculty often own the copyright in works they create even in the course of their employment. Harvard's Intellectual Property Policy can be found at www.techtransfer.harvard.edu/resources/policies/IP/.

Can a copyright be transferred to someone else?

Like any other property, a copyright can be sold or given to someone else, who then becomes the owner of the copyright. A copyright is a bundle of exclusive rights, which can be transferred separately or all together. For example, in signing a book contract, an author typically transfers or grants the publisher exclusive publication rights.

A copyright owner can also retain the copyright but permit (or non-exclusively license) others to exercise some of the owner's rights. For example, a photographer might permit the use of one of her photographs on a book jacket. A shrink-wrap license accompanying a computer program is another example of a non-exclusive copyright license.

How does a work become copyrighted?

Under current law, copyright protection begins when an eligible work is fixed in a tangible medium of expression, such as by being written on paper or recorded on film or disk. Contrary to popular belief, it is not necessary to register a work with the Copyright Office in Washington in order to copyright it, nor is it any longer necessary to include a copyright notice.

Although *statutory* copyright now arises when a work is fixed in a tangible form, *common law* copyright may protect expression that has not been fixed—for example, an extemporaneous lecture. In addition, bootlegged recordings of live musical performances are subject to statutory remedies.



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Should I include a copyright notice or register the copyright in my work?

Although no longer required for copyright protection, a copyright notice is advisable. A proper notice generally requires the symbol "©" or the word "Copyright," together with the copyright holder's name and the year of first publication—for example, "© 2002 President and Fellows of Harvard College." This designation should appear on or near the title page in printed works, and on an early screen in electronic works. Though not required for copyright protection, a notice will prevent a defense of innocent infringement and will inform others that the work is copyrighted and by whom, thus potentially deterring infringement and facilitating requests for permission.

Registration of the copyright with the Copyright Office, while not necessary unless you wish to sue for infringement, confers certain benefits—for example, making statutory damages available—and thus may be desirable for some works. To gain some of those benefits, you must register before the infringement commenced or within a specified period after first publication of the work. Forms and instructions for registering a copyright are available at the U.S. Copyright Office website, www.copyright.gov.

Can I avoid infringement by crediting the source?

No. Copyright infringement and plagiarism are two different things. Plagiarism is the misappropriation of another's work, passing it off as your own without indicating the source. It is possible to plagiarize a work without infringing the copyright—for example if you take another's ideas without proper attribution, even though you do not copy the language, or you borrow from a work whose copyright has expired. Conversely, it is possible to infringe without plagiarizing. Properly citing the work you are copying does not avoid liability for infringement.

When do copyrights expire, and how can I determine if an old work is still covered by copyright?

The answer is somewhat complicated, largely because the rules governing the copyright term have been amended a number of times. The term of United States copyright protection will depend upon when the work was created, whether it is unpublished or published, and when it was first published.

For works created in 1978 or thereafter, the copyright term commences upon creation. For most works, the term continues for the life of the author plus 70 years. For pseudonymous and anonymous works, and works made for hire, the term continues until 95 years from first publication or 120 years from creation, whichever expires first.

For works created before 1978, the following rules apply:

Works that were created before 1978 but remained unpublished on January 1, 1978 have the same term as works created in 1978 or thereafter, as described above, with one exception. The



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exception is that the copyright term of any such work that was published before the end of 2002 will not expire before the end of 2047.

Before the current Copyright Act became effective in 1978, publication of a work in the United States with a proper copyright notice conferred statutory copyright and commenced the copyright term. Publication of the work in the United States without a proper copyright notice placed the work in the public domain, with narrow exceptions. The same general rule continued, with somewhat broader exceptions, until March 1, 1989. Hence, for works published in the United States before 1978 (or, with more exceptions, before March 1, 1989), if there is no copyright notice, the work may well be in the public domain. Be particularly careful with works of foreign origin. Special rules have restored copyright in some foreign works published in this country without proper notice.

Works that were created before 1978 and published with a proper copyright notice before 1923 are now in the public domain. Works published with a proper copyright notice from 1923 through 1963 had an initial copyright term of 28 years, which could be renewed for a second term that now extends 67 years, for a total of 95 years. For these works, a renewal filing with the Copyright Office near the end of the first term was necessary to secure the second term; if a timely filing was not made, the work fell into the public domain at the end of the first term. To determine whether the copyright was renewed, you can check with the Copyright Office in Washington (202-707-3000, or www.loc.gov/copyright/). Alternatively, you can find some, but not all, Copyright Office renewal records online, either at the Copyright Office website (www.copyright.gov/records/index.html) or in a Copyright Renewal Database made available by Stanford University (<https://collections.stanford.edu/copyrightrenewals/bin/page?forward=home>). Works published with a proper copyright notice from 1964 through 1977 also had an initial term of 28 years, with a renewal term of 67 years, for a total of 95 years, but the renewal term vested or will vest automatically at the end of the first term without any filing.

A helpful chart by Lolly Gasaway summarizing these rules in a simple way, entitled “When Works Pass into the Public Domain,” may be found at www.unc.edu/~unclng/public-d.htm. A more comprehensive and detailed table by Peter Hirtle, entitled “Copyright Term and the Public Domain in the United States,” may be found at <http://copyright.cornell.edu/resources/publicdomain.cfm>. Footnote 1 of the Hirtle document contains references to a number of other useful resources.

Note that one work may incorporate or be based upon an earlier work. For example, with appropriate permission, a motion picture may be based on a novel, or a book may include a photograph. The copyrights remain separate. Hence, the copyright term of the earlier work is not extended by the use of that work in the later work. But the copyright notice on the later work may pertain only to the later work, which can lead to confusion about the copyright status of the earlier work. Sometimes a work that has fallen into the public domain is published with new commentary, notes or the like. The public domain work may be copied by others, but not the new matter, which is protected by copyright.



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The discussion above concerns copyright term in the United States. The copyright term in foreign countries often varies from that in the U.S., especially for works created before 1978. This is true for works created in this country by U.S. authors, as well as works created abroad or by foreign authors. If you are reproducing, publishing, distributing or displaying a work in a foreign country, you will need to investigate the copyright term in that country, a subject beyond the scope of this guide.

Does a copyright expire when a work goes out of print?

No. The copyright lasts for a term of years (see above), regardless of whether the work is still in print.

How do I get permission to reproduce or disseminate someone else's copyrighted work?

Find the copyright owner and ask. There are no special forms that must be used, and permission can be oral or written, though it is good practice to obtain permission in writing. The copyright owner is free to charge whatever fee he or she wishes, though the user is likewise free to try to negotiate a lower fee. Most major publishers and periodicals have a "permissions desk" or a "rights editor," and a written request addressed in this way will usually find its way to the right person. You should specify the publication you wish to take from; the precise pages, chapters, photographs or the like you want to use; how many copies you want to make; and the purpose of your use (for example, "as a handout in an undergraduate course in economics at Harvard College"). Many permissions desks accept requests by e-mail or through the publisher's website.

You can make as many copies as you like, without advance permission, from certain academic and scholarly journals now enrolled with the Copyright Clearance Center, a private clearing house (978-750-8400; www.copyright.com). After you copy, you remit the prescribed per-copy fee to the CCC. If a publication is enrolled with the CCC, its masthead will usually provide the necessary information. (The CCC rules for course packs may differ; check with them for current information.)

What happens to copyright in cyberspace?

Because the electronic environment presents us with new media, and even calls into question the concept of works "fixed" in a "tangible medium," a great many questions challenge the conventions of copyright doctrine. Congress and the courts are struggling to keep up with new technology, and the opinions of scholars and commentators on how the law should cope with these new changes are in lively conflict.

Nonetheless, certain principles endure. The first and most important is that there is copyright law in cyberspace. A work that is available electronically—even if it is available only electronically—is as eligible for copyright protection as a work in any other medium. Thus, the fact that you can download text or graphics does not mean that the material is not copyrighted. And the ability to download a copyrighted work does not mean that you are free to disseminate that work to others, either electronically or in hard copy.



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Those who put their work on the Internet and wish to control its use should use the copyright designation, just as they would do in print or any other medium.

You should abide by the following principles when you access a database or other electronic source of information from your own computer.

- You are free to read, watch or listen to any material to which you have authorized access, even if it is copyrighted. (In some cases you may have to pay a fee to do this.)
- Because downloading material to your own computer necessarily makes an electronic copy of it, and because printing what you've downloaded makes another copy, a copyright owner is entitled to prohibit downloading and printing.
- Remember that the site owner is not necessarily the copyright holder of the site's content. A site owner may hold the copyright to some materials but not others, or to none of it. Requests for permission should be directed to the copyright holder, not necessarily the website owner.
- Look for a copyright notice on the material. The notice may be on the opening screen, a home page, an "About this Program" screen, or at the beginning or end of individual items (such as an article or a graphic) within the database.
- If you are in a commercial database that charges a fee for searching material, and also permits you to download or print the material through mouse or key-stroke commands, you may assume that the copyright owner has authorized the operator of the database to allow users to download and print. You may pay an additional fee for this privilege. Multiple copies for classroom use may require additional fees.

What should I be aware of when I create a website?

If you create a website and wish to post copyrighted material on it, you must obtain the permission of the copyright holder, just as you would for more traditional media, unless fair use or another exemption applies. See the following section for a discussion of fair use and its application to course websites.

What about linking to other material?

Like other aspects of digital media, the law relating to links from one website to another is not entirely settled. Generally, however, you should not have a problem if you simply post a link to another site, even if that site contains copyrighted material. In such a case, you are not publishing the material; you are simply pointing the way to someone else's publication.

You should not, however, provide a link to a site that you have reason to know is violating copyright law—for example, a site that illicitly allows the free downloading of copyrighted software, music, or other material. You may reasonably assume that a website has the right to include the material found there, unless you have reason to know it is infringing.



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If the site you wish to link to specifies particular requirements or restrictions concerning linking (e.g., in its “Terms of Use”), you should generally comply with them or seek permission if you wish to depart from them. Ordinarily, sites that require users to enter a user name and password do not permit linking that would bypass that process.

When you construct a link, be sure that it simply sends the user to another site. If you actually bring the material onto your own site, or “frame” it, you may be infringing copyright and may also mislead users as to the source of the content.

3 FAIR USE OF COPYRIGHTED MATERIAL

- What is "fair use"?
- What is the test for fair use?
- What considerations are relevant in applying the first fair use factor—the purpose and character of the use?
- What considerations are relevant in applying the second fair use factor—the nature of the copyrighted work?
- What considerations are relevant in applying the third fair use factor—the amount and substantiality of the portion used in relation to the copyrighted work as a whole?
- What considerations are relevant in applying the fourth fair use factor—the effect upon the potential market for or value of the copyrighted work?
- How should one weigh the various factors in arriving at a determination whether there is fair use?
- How does fair use apply to photocopying of materials?
How does fair use apply to the use of third-party materials on the observatory or a course website?
- How to use works using copyrighted NRAO images (ALMA, etc.)?

Fair Use of Copyrighted Material

What is "fair use"?

Fair use is the right to use a copyrighted work under certain conditions without permission of the copyright owner. The doctrine helps prevent a rigid application of copyright law that would stifle the very creativity the law is designed to foster. It allows one to use and build upon prior works in a manner that does not unfairly deprive prior copyright owners of the right to control and benefit from their works. Together with other features of copyright law like the idea/expression dichotomy discussed above, fair use reconciles the copyright statute with the First Amendment.

What is the test for fair use?

The fair use defense is now codified in Section 107 of the Copyright Act. The statutory formulation is intended to carry forward the fair use doctrine long recognized by the courts. The



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statute provides that fair use of a work “for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use, scholarship, or research)” is not an infringement of copyright. To determine whether a given use is fair use, the statute directs, one must consider the following four factors:

- the purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes;
 - the nature of the copyrighted work;
 - the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
 - the effect of the use upon the potential market for or value of the copyrighted work.
- These factors are not exclusive, but are the primary—and in many cases the only—factors courts examine. The following questions consider each of these four factors in turn.

What considerations are relevant in applying the first fair use factor—the purpose and character of the use?

One important consideration is whether the use in question advances a socially beneficial activity like those listed in the statute: criticism, comment, news reporting, teaching, scholarship, or research. Other important considerations are whether the use is commercial or noncommercial and whether the use is “transformative.”

Noncommercial use is more likely to be deemed fair use than commercial use, and the statute expressly contrasts nonprofit educational purposes with commercial ones. However, uses made at or by a nonprofit educational institution may be deemed commercial if they are profit-making.

In recent years, the courts have focused increasingly on whether the use in question is “transformative.” A work is transformative if, in the words of the Supreme Court, it “adds something new, with a further purpose or different character, altering the first with new expression, meaning or message.” Use of a quotation from an earlier work in a critical essay to illustrate the essayist’s argument is a classic example of transformative use. A use that supplants or substitutes for the original work is less likely to be deemed fair use than one that makes a new contribution and thus furthers the goal of copyright, to promote science and the arts. To quote the Supreme Court again, transformative works “lie at the heart of the fair use doctrine’s guarantee of breathing space within the confines of copyright.”^[1]

Courts have also recognized, however, that non-transformative uses may be socially beneficial, and that a use does not have to be transformative to support a finding of fair use. The Supreme Court has cited reproduction of multiple copies for classroom distribution as the most obvious example of a non-transformative use that may be permitted as fair use in appropriate circumstances. The Court’s emphasis on whether a use is transformative, however, makes it difficult to know how to weigh uses that are for non-profit educational purposes but are also non-transformative. In addition, it could be argued in some circumstances that verbatim copying of a work for classroom use is “transformative,” in that (to quote from the Court’s definition)



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the instructor is adding “something new, with a further purpose or different character, altering the first with new expression, meaning or message” in the course of presenting the material.

Other factors that sometimes weigh in the analysis of the first fair use factor include whether the use in question is a reasonable and customary practice and whether the putative fair user has acted in bad faith or denied credit to the author of the copyrighted work.

What considerations are relevant in applying the second fair use factor—the nature of the copyrighted work?

The two main considerations are whether the work is published or unpublished and how creative the work is. Unpublished works are accorded more protection than published ones, as the author has a strong right to determine whether and when his or her work will be made public. The fact that a previously published work is out of print may tend to favor fair use, since the work is not otherwise available.

Works that are factual and less creative are more susceptible of fair use than imaginative and highly creative works. This is in keeping with the general principle that copyright protects expression rather than ideas or facts.

However, the second factor is typically the least important of the fair use factors.

What considerations are relevant in applying the third fair use factor—the amount and substantiality of the portion used in relation to the copyrighted work as a whole?

Courts have taken both a quantitative and a qualitative approach in assessing the impact on the fair use analysis of the amount and substantiality of the portion used. What percentage of the original work has been used? There are no bright lines, but the higher the percentage, the more likely this factor is to weigh against fair use.

Even if the percentage is fairly small, however, if the material used is qualitatively very important, this factor may weigh against fair use. Thus, for example, in a case in which *The Nation* magazine published excerpts, totaling only 300–400 words of verbatim quotes, from Gerald Ford’s forthcoming book-length memoir, the Supreme Court held that the third factor weighed against fair use, because the excerpts included Ford’s discussion of his pardon of Nixon and other central passages that the court found to be the “heart” of the work.^[2]

Also important in applying the third factor is the nexus between the purpose of the fair use and the portion of the copyrighted work taken. The extent of permissible copying varies with the purpose and character of the use. Taking more of the copyrighted work than is necessary to accomplish the fair user’s salutary purpose will weigh against fair use. In some cases, the fact that the entire work—for example, an image—was needed to accomplish the fair use purpose has led the court to hold that the third factor was neutral, favoring neither the copyright holder nor the putative fair user.



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What considerations are relevant in applying the fourth fair use factor—the effect upon the potential market for or value of the copyrighted work?

Use that adversely affects the market for the copyrighted work is less likely to be a fair use. This ties back to the first factor, and the question whether the putative fair use supplants or substitutes for the copyrighted work. The fact that a use results in lost sales to the copyright owner will weigh against fair use. Moreover, courts have instructed that one must look at the likely impact on the market should the use in question become widespread; the fourth factor may weigh against fair use even if little market harm has yet occurred.

This inquiry is not confined to the market for the original, but also takes into account derivative markets. For example, if a novel were made into a movie, the movie might not harm sales of the book—indeed, it might help them—but the harm to the derivative market for movie rights would count against fair use. This principle works in a straightforward way in the case of well-established markets, like the market for movie rights for a novel. But it becomes much more difficult to apply if there is not an established market. Consistent with the statutory language, courts have also looked at whether there is harm to a “potential market” for the copyrighted work. However, if there were deemed to be a “potential market” for every use asserted to be a fair use, then the fourth factor would always favor the copyright owner, since the copyright owner would be harmed by loss of the licensing fee for that use. One way courts have tried to avoid this circularity is by asking whether a market, if not already established, is “reasonable” or likely to be developed by copyright owners. In keeping with this approach, courts have concluded that there is no protectible market for criticism or parody, but have considered evidence of harm to markets under development or viewed as attractive opportunities for copyright owners, such as the market for downloads of songs. In some cases, courts have indicated that the absence of a workable market will tend to favor the fair user on the fourth factor because there is no efficient means to buy permission for the use in question.

This is a difficult and evolving area of the law. We can nevertheless venture a few generalizations: Uses that substitute for the copyrighted work in its original market or an established derivative market generally cause market harm that is cognizable under the fourth factor. Where there is no established market, harm is less likely to be found, but still may be found depending on the facts, especially if the fair use case under the other factors is weak and the “market” in question is under development by copyright owners or obviously attractive commercially. In any case, the Supreme Court has said, market harm is a matter of degree, and the importance of the fourth factor will vary, not only with the amount of harm, but also with the relative strength of the showing on the other factors.

How should one weigh the various factors in arriving at a determination whether there is fair use?

The fair use test requires an assessment of all the factors together. The courts have repeatedly emphasized that there are no bright line rules, and that each case must be decided on its own facts. The factors often interact in the analysis. For example, the Supreme Court has stated that



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the more transformative the new work, the less will be the significance of other factors, like commercialism, that may weigh against a finding of fair use. The more transformative the secondary use, the less likely it is that the secondary use will substitute for the original and cause direct market harm. In reaching a fair use determination, all of the factors should be explored, and the results weighed together, in light of the goal of copyright law to “promote the progress of science and useful arts” (U.S. Const., art. I, § 8, cl. 8).^[3]

To understand better how courts have applied the fair use test in different situations, you may find useful the summaries of selected fair use cases at http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter9/9-c.html. In addition, the U.S. Copyright Office maintains a Fair Use Index, which offers a searchable database of selected judicial decisions involving fair use, together with brief summaries: <http://copyright.gov/fair-use/>.

How does fair use apply to photocopying of materials?

Before answering this question, it is worth reiterating that NRAO licenses a number of periodicals and other copyrighted works for educational and institutional use. Alternatively, a copy of the material you wish to use may be publicly available on the Internet—for example, through Google Scholar or a repository such as SSRN—in which case you may be able to link to it. See generally “What about linking to other material?” above. If the material is not available through NRAO’s licensed resources, and is not otherwise available on the Internet, in some circumstances you may be able to copy and distribute the material for course use under the fair use doctrine.

When the Copyright Act of 1976 was being enacted, there was extensive debate about photocopying of copyrighted material for educational and scholarly purposes. Congress declined to adopt a specific exemption for such photocopying, and instead left this to be addressed under the fair use doctrine. Section 107 provides that, if the traditional criteria are met, fair use can extend to reproduction of copyrighted material for purposes of classroom teaching. The difficulty comes in applying those criteria. Recognizing that difficulty, the House Judiciary Subcommittee urged representatives of copyright owners and educational institutions to work out a set of specific guidelines, and the resulting guidelines were included in the House Report on the Copyright Act of 1976.

They are intended as a “safe harbor,” to define certain activities that, at a minimum, will qualify for fair use. The Guidelines set forth requirements for “brevity” (limiting the amount of material that may be copied), “spontaneity” (requiring that there not be time to secure permission between when the decision to copy is made and the copy is used in class), and “cumulative effect” (limiting the aggregate amount of such copying). In addition, the Guidelines contain a number of further restrictions, including that an item may not be copied again by the same person for use in a subsequent term. The Guidelines also permit, somewhat more liberally, the making of a single copy of excerpts of a work for use by an instructor in research or teaching. When the Guidelines were agreed to by certain representatives of copyright owners and educational institutions, a number of educational groups dissented, objecting that the rules were unduly narrow, even as a safe harbor, and would constrain the reasonable application of fair use to photocopying of classroom materials.



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Looking at the legislative history of the Copyright Act of 1976, the following are factors that a court might take into account, in the framework of the four factor fair use analysis, in determining whether a given instance of photocopying for course use constituted fair use. Some of the questions bear on more than one of the four statutory factors, which remain the touchstone.

First Factor: Purpose and Character of Use

- Will the material be the subject of significant commentary, criticism, explanation or the like by the instructor? (The more the material functions to illustrate, support or enable the *new* meaning or message delivered by the instructor—as opposed to functioning mainly as material for students to engage in its own right—the more likely its reproduction and distribution for course use will qualify as “transformative” in the sense described above and hence favor a finding of fair use.)
- Is the copied material integral to the nonprofit educational purpose of the course? For example, is the material important to a lecture or classroom discussion? (Even if the use is not “transformative,” use for a nonprofit educational purpose will weigh in favor of fair use.)
- Is the copyrighted material recently published (for example, in a newspaper), or is the instructor inspired at the last minute to use the material in class, with the result that there is little or no time to obtain permission? (An affirmative answer will weigh in favor of fair use.)
- Are copies distributed to anyone other than students in the course who need one? (Distribution to others could weigh against a finding that the use is for a nonprofit educational purpose. Unless there is a compelling educational reason to do otherwise, materials copied in reliance on fair use should be restricted to enrolled students.)
- Are students being charged for the copies? If so, does the charge have any profit component, or does it only recover costs? (Copying and distribution of a commercial nature will weigh against fair use.)

Second Factor: Nature of the Work

- Is the copyrighted material published or unpublished? (Unpublished works have traditionally been accorded stronger copyright protection than published works.)
- Is the copyrighted material factual in nature or creative? (More fair use latitude is accorded to factual works.)
- Is the copyrighted material readily available for purchase? Is it in print or out of print? (The fact that a work is out of print and unavailable for purchase through normal channels will favor fair use copying for educational purposes, though this may be mitigated if permission to photocopy may readily be purchased.)
- Was the copyrighted material prepared primarily for the higher educational market—e.g., a textbook? (Fair use is likely to be more restricted for such material, since photocopying it is more likely to harm the market for it than would be true if the original were aimed primarily at a different market.)

Third Factor: Amount Copied

- How much of the copyrighted work is being copied? How long is the portion copied and what percentage of the work does it represent? (The smaller the portion, the more likely the



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copying will qualify as fair use. Generally, a strong showing on the other factors will be needed to justify copying more than one chapter of a book, or one article from a periodical or newspaper, or one short story, short essay or short poem, or other similarly small parts of a work.)

- Is the portion copied the “heart” of the work? (Even a quantitatively small portion of a work may weigh against fair use if it is the most important or commercially valuable part of it.)
- Is the amount copied limited to that which is necessary for the educational purpose to which it is being put? (You should copy no more than is necessary for the educational purpose.)

Fourth Factor: Effect on the Market

- Will the photocopying result in lost sales of copies of the copyrighted work? (Copying that substitutes for sales of the copied work will weigh significantly against a finding of fair use.)
- Can permission to photocopy the material in question readily be purchased through the CopyrightClearanceCenter (the “CCC”) or another efficient licensing mechanism, such as the publisher? (Even if the copying will not supplant sales of the entire work, the market for the work may nonetheless be harmed if there is an efficient mechanism for buying copies of the excerpt you want or for buying permission to copy the excerpt. Whether this market harm, if present, will tip the overall determination against a finding of fair use depends on how the other fair use factors weigh in the particular situation. The economic significance to the publisher of permission fees, as compared to revenues from book sales, may also weigh in the analysis.)
- Is it difficult or perhaps impossible to locate the copyright holder or are there other significant obstacles to seeking permission? Is the expense of seeking permission greater than the value of the permission sought? (Where there is no cost-effective way to obtain permission, that fact will weigh in favor of a finding of fair use, which can be seen in part as a means for remedying market failure.)
- Does the University, or other person making the copy, own a lawfully acquired or purchased copy of the work? (A negative answer will weigh against fair use.)
- Is the price of permission prohibitive—i.e., so high that the instructor would reasonably forego educational use of the material in question rather than pay it? (If so, the societal value of the educational use may tend to counter the potential harm to the market for the work in proceeding without buying permission.)

Other Considerations Bearing on Various of the Factors

- Is any copyright notice on the original reproduced on the photocopy? (You should reproduce the copyright notice, so that users know the work is in copyright and where to start in seeking permission for subsequent uses, and should include appropriate citation or attribution to the source.)
- Is this the first time this instructor has photocopied this excerpt for course use, or has photocopying of the same material been repeated from term to term without permission? (Some people assume that “the first use is fair.” This is incorrect. Each use – whether it is the instructor’s first use or a later use – ought to be evaluated on its own merits.)
- How extensive is the reliance on fair use in providing materials for this course? Is the copied material supplementing other copyrighted materials purchased or licensed for use in the course,



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rather than replacing such materials? (Copying that fills out a reading list of purchased or licensed materials—for example, to bring a subject up to date or supply missing pieces—may be more likely to qualify as fair use than copying that substitutes altogether for materials that are purchased or for which a license or permission has been acquired.)

You also will find some further guidance on these issues under the question that follows (How does fair use apply to use of third-party material on a course website?).

As is evident from this discussion, the law in this area is difficult to apply. In other situations, if you wish to make photocopies for course use without obtaining permission from the copyright owner, you should have a good faith reasonable belief that the copying qualifies as fair use.

How does fair use apply to use of third-party materials on a website?

The basic considerations that bear on the use of copyrighted material on a course website are similar to those discussed above concerning photocopying. The questions discussed above are generally relevant and provide a good starting point. But the difference in the medium—a digital network rather than hard copies—and the fact that more kinds of content can readily be provided via a website—audiovisual works, music and color images, for example, in addition to text—alter the application of the four fair use factors in various ways.

- Taking no more than one chapter of a book will not assure that the third factor favors fair use, and vice versa, but it is a good starting point gauge. Be especially careful in your fair use analysis if you take more than one chapter, or if the excerpt consists of more than 50 pages or 10% of the work, or if you are taking the “heart of the work.”
- In all cases, limit the size of the excerpt to the amount needed for the pedagogical purpose. Use less than a whole chapter if that will suffice.
- If a license to use the excerpt you want cannot readily be purchased from the copyright holder or the Copyright Clearance Center, the risk of infringement is significantly reduced.
- If such a license is available, much will turn on the nature of the work, the size of the excerpt taken, the manner in which it is used (including how transformatively it is used), and the likely economic impact of not paying the license fee on the copyright holder and on the incentive to create and distribute such works.

When you apply the fair use factors to multimedia content, the analysis is likely to differ in some ways from the analysis of textual materials above. Taking images, for example, there may be two different copyrights in an image—one in the underlying work of art and the other in the photograph—that need to be considered, though it is sometimes difficult or impossible to identify the photographer;^[8] you typically need to use the entire image to achieve your educational purpose, and courts have recognized that copying the entirety of an image where necessary for a legitimate fair use purpose will not weigh against a fair use finding; there is a longstanding tradition in higher education of making slides from art reproductions in periodicals, exhibition catalogs and books for teaching and study; there is no centralized and efficient mechanism for licensing educational images that is analogous to the CCC in the case of text; and the reproductions made for educational use on a course website are typically lower in resolution and



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quality than the images that copyright holders sell or license for publication, thus reducing the likelihood that a digitized image will harm an existing market.

In recent years, a number of fair use “best practice” guides have been promulgated. Though they have been developed primarily by user communities, and may not be fully accepted by copyright owners, the guides are another useful point of reference. Various guides can be found on the website of the Center for Media & Social Impact: <http://www.cmsimpact.org/fair-use/best-practices>. See, for example, the [Code of Best Practices in Fair Use for the Visual Arts](#) and the [Code of Best Practices in Fair Use for Academic and Research Libraries](#).

The following are some general measures that, while not substituting for the four factor fair use test, will tend to assist a finding of fair use when copyrighted material is made available on a website:

- Use others’ copyrighted material in your website only if the material is integral to the organization.
- Include your own comments, criticism and explanation, or otherwise make your use of the copyrighted material transformative.
- Use only a limited portion of others’ copyrighted material, and only what is necessary for your educational purpose.
- Be wary of using others’ copyrighted material that is produced in digital form primarily for instructional use, or where your use would reasonably be expected to harm the market for the analog version of the material.
- Consider whether a license (permission) allowing the educational use of the material that you wish to make can readily be purchased. If it can, this fact generally will weigh against fair use, though it still may be possible to prevail on fair use depending on the other circumstances (see the preceding discussion).
- Limit access to qualified people. Assuming access is provided over a network, require a password or PIN.
- Wherever feasible, employ streaming formats and technological limits on copying, retention and further dissemination of the work by students.
- Only incorporate portions from lawfully acquired copies of others’ materials.
- Avoid taking many excerpts or portions from any one work.
- Alter others’ works only where necessary to support specific instructional objectives.
- Credit the sources fully and display the copyright notice from the original.
- Include a notice that material on the website is being provided under fair use, and that the material may only be used for personal, noncommercial educational purposes. For each item of copyrighted material you wish to use, make a good faith fair use determination. If you do not reasonably believe your proposed use passes the four factor test, you should obtain permission for the material or should not use it.



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How to use works using copyrighted NRAO images (ALMA, etc.)?

- Officially, any publication the uses an NRAO-copyrighted image should be deposited with the NRAO Library. This was a policy determined by the Education and Public Outreach (EPO) and the NRAO Library in the 1990s. The NRAO Library does not actively pursue materials using NRAO copyrighted images, but depends on the author and publisher to adhere to the policy. Adherence to the policy is minimal and the collection represents only a small footprint of works using copyrighted NRAO images. Works that are sent for deposit, which fit our general collection criteria outlined below will be cataloged and put into circulation with the rest of the collection. Popular, esoteric, humorous, and other works that do not fit the overall selection criteria will not be cataloged but are available to browse in the library. This collection may eventually be removed in consultation with the Education and Public Outreach once the related policy is revised.

(Information taken from Harvard University General Council website, and modified)

4 EXCEPTIONS

- What is Section 108 exceptions for libraries?
- What are exceptions for accessibility, i.e. the Chafee Amendment, Marrakesh Treaty?
- What is the TEACH Act?

Exceptions

- ***What is the Section 108 exceptions for libraries?***

The Copyright Act at 17 U.S.C. § 108 provides a set of rules regarding library reproductions. In general, a library or archive open to the public (or whose collection is available to specialized researchers other than those affiliated with the institution) will not be liable for copyright infringement based upon a library patron’s unsupervised use of reproducing equipment located on its premises, provided that the copying equipment displays a notice that the making of a copy may be subject to the copyright law. The notice must appear in a specific form, as shown below.

When patrons ask the library to copy text works, the warning notice must be printed within a box located prominently on the order form, either on the front side of the form or immediately adjacent to the space for the name and signature of the user. The library may make only one copy of such works per patron. Copying a complete work from the library collection is prohibited unless the work is not available at a “fair price.” This is



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generally the case when the work is out of print and used copies are not available at a reasonable price. If a work, located within the library's collection, is available at a reasonable price, the library may reproduce one article or other contribution to a copyrighted collection or periodical issue, or a small part of any other copyrighted work, for example, a chapter from a book. This right to copy does not apply if the library is aware that the copying of a work (available at a fair price) is systematic. For example, if 30 different members of one class are requesting a copy of the same article, the library has reason to believe that the instructor is trying to avoid seeking permission for 30 copies.

The copying, whether performed by the library or whether unsupervised by the library patron, cannot be for a commercial advantage. This means that the library (or a copying service hired by the library) cannot profit from the copying. In addition, the copying for the patron must be done for purposes of private study, scholarship, or research.

If a library or educational institution makes a copy of a work for a patron, it must include the actual copyright notice from the material being copied, for example, "© 1953, Grove Press." Under 17 U.S.C. § 108(a), if the material contains no copyright notice, the material should be stamped with the notice, "This material may be protected by copyright law (Title 17 U.S. Code)." In addition to limiting the library's liability, the use of the warning notice will defeat an infringer's defense that the copying was an "innocent infringement" and might even support an argument that the infringement was willful, thereby increasing the damages paid to the copyright owner.

In regards to library copying after 75 years: in 1998, the Sonny Bono Copyright Term Extension Act extended the period of copyright protection for an additional 20 years. As part of the Act, Congress provided that during the last 20 years of any term of copyright of a published work, a library or archives may reproduce a copy of the work for purposes of preservation, scholarship, or research provided that: the work was not being distributed commercially; the work cannot be obtained at a reasonable price; or the copyright owner or its agent provides notice that either of the above conditions applies.

- ***What are the exceptions for accessibility, i.e. the Chafee Amendment, Marrakesh Treaty?***

Chafee Amendment

The amendment allows authorized entities to reproduce or distribute copies or phonorecords of previously published literary or musical works in accessible formats exclusively for use by print-



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disabled persons. However, this amendment was created in 1996 and has significant limitations. Read more about it at the Library of Congress: <https://www.loc.gov/nls/about/organization/laws-regulations/copyright-law-amendment-1996-pl-104-197/>

Marrakesh Treaty Implementation Act

The **Marrakesh Treaty Implementation Act** builds on the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled. The major goal of the Implementation Act is to modify and amend United States copyright laws to make it easier for people with print disabilities to access materials.

The types of works that can be made accessible were expanded exponentially because of the Marrakesh Act. All literary works and musical works in the form of text or notation are included.

The Act clarifies **who is covered** under the new amendment including:

- Someone who is blind
- Someone with a "visual impairment or perceptual or reading disability" which makes them unable to read printed words "to substantially the same degree as a person without an impairment or disability."
- Someone with a physical disability making them unable to hold or manipulate a book or focus or move their eyes to read.

In order to be an "**eligible person**" the condition must be "determined by a competent authority possessing experience in making such determination."

While only three, broad condition are listed in the law, many organizations provide their services to those whose disability may fall outside of the listed conditions.

The disability does not have to be permanent. **Temporary disabilities** can benefit from the Act as long as the condition persists.

The Marrakesh Act **does not mandate** that all organizations and/or institutions provide accessible formats.

The **formats** these materials can be provided in can be any form that "allows an eligible person to have access to a work that is equivalent to a person without a disability." It is no longer limited to braille or audio recordings.

When implementing the Marrakesh Act, please make sure you abide by the following rules:

- Only serve eligible persons
- Limit distribution of the accessible format to those eligible persons
- Discourage any further reproductions and distribution of the material
- Be conscious of handling copies of the works and recording copies of the works created by the authorized entity.
- Respect the privacy of the eligible persons



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- Make the titles of the accessible format materials publicly available
- Make information on policies and practices, as well as overseas authorized partners publicly available

Works Covered Under Treaty:

- Books
- E-Books
- Audiobooks
- Newspapers
- Journals
- Musical scores
- Illustrations
- Images

Works Not Covered Under Treaty:

- Audio-visual works
 - Films
 - Television programs
 - Slide-tape
 - Live theater productions

- ***What is the Teach Act?***

The TEACH Act (Technology, Education, and Copyright Harmonization Act of 2002) was signed into law in November, 2002.

This law expanded instructor's ability to use works that are protected by copyright (most works other than US government publications) in digital teaching materials without first obtaining permission from the copyright owner. This covers materials prepared for at-home use by students enrolled courses taught in traditional classroom settings as well as distance learning courses.

The TEACH Act updated the copyright law to remove impediments to the use of new technologies in teaching. Until these statutory changes, electronic transmissions of copyright protected material fell outside the education exemptions found in the copyright law because those exemptions were explicitly limited to face-to-face classroom settings.

Under the TEACH Act, certain copyrighted materials may be used in electronic formats without having to obtain permission from the copyright holder. In order to qualify to use copyrighted materials under the TEACH Act, several conditions must be satisfied:



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4.1.1 Faculty Responsibilities:

1. The material must be provided at the direction of or under the supervision of an instructor and must be an integral part of the course curriculum (i.e., not merely entertainment or unrelated background material).
2. The amount of material provided must be comparable to that typically displayed in a live classroom session. For certain works, the display of the entire work could be consistent with displays typically made in a live classroom setting (e.g., short poems or essays, or photographic images). Distribution of entire textbooks, course-packs or supplemental readings would not be authorized under the TEACH Act.
3. You must provide notice to students that materials distributed in the course may be subject to copyright protection.

4.1.2 Technological Requirements:

Technological measures must be employed so that:

1. To the extent technologically feasible, the transmission of material is limited to students enrolled in the course (through password-restricted access or other similar measures);
2. The material is available to students for a limited duration no longer than the "class session" i.e., the period during which a student is logged on to the server. Students may not be permitted to retain a permanent copy of the material or to further disseminate it. The legislative history identifies certain streaming technologies and digital rights management systems as examples of technological measures that would satisfy this requirement.

4.1.3 Institutional Requirements:

The TEACH Act requires that institutions and universities:

1. Institute policies regarding copyright. Copyright infringement currently violates NRAO's Code of Conduct and the Code of Academic Integrity;
2. Provide information to faculty, staff, and students that accurately describes and promotes compliance with copyright law.

4.1.4 Exclusions:

The TEACH Act does not authorize:

1. The use of works specifically created for use as distance learning products;
2. The use of works that you know or have reason to believe are pirated i.e. not lawfully made. This could include many copyright-protected films and much music downloaded from the Internet;



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3. The conversion of print or other analog versions of works into digital formats unless: no digital version of the work is available; or the digital version employs technological protection measures that prevent its use; and then, conversion is only permitted with respect to the portion of the work authorized to be performed or displayed under the TEACH Act's size restrictions.

4.1.5 Conclusion:

Under the TEACH Act you may now, under certain limited conditions (described above), use short works or portions of larger works in distributed learning situations without first obtaining the permission of the copyright holder.

If you cannot operate within these constraints, you may still be able to provide electronic access to copyrighted materials under the long-standing principle of "fair use." The TEACH Act explicitly provides: "Nothing in this act is intended to limit or otherwise to alter the scope of the fair use doctrine." The provision of downloadable course materials and supplementary reading materials will continue to be subject to the fair use doctrine exclusively.

5 OPEN ACCESS/OER AND CREATIVE COMMONS LICENSES

- What is Open Access and OER?
- When to use/publish open access research or open educational resources?
- What are Creative Commons (CC) Licenses?
- How are CC Licenses applied to a work?

Open Access/OER and Creative Commons Licenses

- **What is Open Access and OER?**

Open Access (OA) refers to freely available, digital, online information; generally scholarly literature. Open Access scholarly literature is free of charge and often carries less restrictive copyright and licensing barriers than traditionally published works, for both the users and the authors. While OA is a newer form of scholarly publishing, many OA journals comply with well-established peer-review processes and maintain high publishing standards. Although Open Access can be used to describe non-scholarly resources like Wikipedia or Khan Academy, OA is usually reserved for scholarly work. Please remember: although OA resources are free to the user, they are not free to produce, host or develop.



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- **Green vs. Gold**



Green OA publishing refers to the self-archiving of published or pre-publication works for free public use. Authors provide access to preprints or post-prints (with publisher permission) in an institutional or disciplinary archive such as [arXiv.org](https://arxiv.org).



Gold OA publishing refers to works published in an open access journal and accessed via the journal or publisher's website. Examples of Gold OA include [PLOS \(Public Library of Science\)](https://www.plos.org) and [BioMed Central](https://www.ncbi.nlm.nih.gov/pmc/). **Hybrid journals** offer authors the option of making their articles open access, for a fee. Hybrid journals are still fundamentally subscription journals with an open access option for individual articles. They are not true open access journals, despite publishers' use of the term "gold open access" to describe this arrangement.

- **Gratis vs. Libre**

Gratis OA is information that is available free of charge, while some copyright and licensing restrictions may still apply.

Libre OA is information that is free of charge and free of most copyright and licensing restriction.

While 'free' implies that the information does not cost anything to access, remember that OA publishing still often involves a cost to the author to publish the work.

- **When to publish in OA and what are some policies?**

Two options that are often presented to scholarly authors to distribute your works openly are Academia.edu and ResearchGate. It's important to remember that unlike open access repositories, both of these are **commercial enterprises** (despite the former's top-level domain). That means they're in the business of selling things, including your user data.

There are many discipline-specific as well as multi-disciplinary open access journals.

- [Directory of Open Access Journals \(DOAJ\)](https://www.doaj.org)

This is a searchable directory of open access journals across all disciplines.



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- [Elsevier's OA Journals](#)

Elsevier publishes many journals and scholarly works in various disciplines. This site provides a list of this publisher's open access journals.

- [SpringerOpen](#)

This is a list of open access journals published by Springer covering numerous disciplines and subject areas.

- [Taylor & Francis OA Journals](#)

Taylor & Francis publishes many journals and scholarly works in various disciplines. This site provides a list of this publisher's open access journals.

- [Wiley Open Access](#)

Wiley publishes many journals and scholarly works in various disciplines. This site provides a list of this publisher's open access journals.

Depositing your work in an open access repository is another way to share your research. Be careful to comply with copyright and licensing restrictions when uploading your published work.

- [arXiv.org](#)

Created by Paul Ginsparg at the Los Alamos National Laboratory, Los Alamos, New Mexico and launched in 1991, arXiv.org (formerly xxx.lanl.gov) is a fully automated electronic archive and distribution server for research papers. Areas covered include physics and related disciplines, mathematics, nonlinear sciences, computational linguistics, and neuroscience.

Every publisher has different policies in regards to self-archiving and your subsequent use of your published work. [The SHERPA/RoMEO database](#) provides a searchable collection of publisher policies--check here when deciding where to publish.

Data sharing is increasingly important in research and now often mandated by funding agencies. There are many discipline-specific data repositories, many of which are open access. Here are some resources for finding open access repositories in which to deposit your datasets:



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- [re3data](#) is a global list of data repositories.
- [Dryad](#) is a data-sharing initiative that partners with publishers to host research data underlying scientific and medical publications.

5.1.1 Federal funders in the United States

With the 2013 [OSTP Public Access mandate](#), research funded by many government agencies must now be made publicly available, with some private funders adopting similar policies. **Keep in mind that publishing in an open access journal does not necessarily satisfy compliance with these policies and may not necessary for compliance.** Rather, these policies require the deposit of research publications and data in particular open repositories, regardless of the type of journal in which they have been published. [See specific policies for more information.](#)

5.1.2 cOAlition S funders


[cOAlition S](#), an alliance of research funding and performing institutions, consists primarily (but not exclusively) of European organizations. US members include the Bill & Melinda Gates Foundation and the Howard Hughes Medical Institute. Their [plan S](#) requires member-funded research to be published in open access journals or on open access platforms, with no embargo. The [Journal Checker Tool](#) is useful for determining whether a publication option meets plan S requirements.

- **What are Creative Commons (CC) Licenses and their uses?**


Creative Commons licenses give everyone from individual creators to large institutions a standardized way to grant the public permission to use their creative work under copyright law. From the reuser’s perspective, the presence of a Creative Commons license on a copyrighted work answers the question, “What can I do with this work?”

6 THE CREATIVE COMMONS LICENSE OPTIONS

There are six different license types, listed from most to least permissive here:

-  **CC BY:** This license allows reusers to distribute, remix, adapt, and build upon the material in any medium or format, so long as attribution is given to the creator. The license allows for commercial use.

CC BY includes the following elements:

BY  – Credit must be given to the creator





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- **CC BY-SA:** This license allows reusers to distribute, remix, adapt, and build upon the material in any medium or format, so long as attribution is given to the creator. The license allows for commercial use. If you remix, adapt, or build upon the material, you must license the modified material under identical terms.

CC BY-SA includes the following elements:


BY  – Credit must be given to the creator


SA  – Adaptations must be shared under the same terms



- **CC BY-NC:** This license allows reusers to distribute, remix, adapt, and build upon the material in any medium or format for noncommercial purposes only, and only so long as attribution is given to the creator.

It includes the following elements:


BY  – Credit must be given to the creator


NC  – Only noncommercial uses of the work are permitted




- **CC BY-NC-SA:** This license allows reusers to distribute, remix, adapt, and build upon the material in any medium or format for noncommercial purposes only, and only so long as attribution is given to the creator. If you remix, adapt, or build upon the material, you must license the modified material under identical terms.

CC BY-NC-SA includes the following elements:

BY  – Credit must be given to the creator

NC  – Only noncommercial uses of the work are permitted

SA  – Adaptations must be shared under the same terms




- **CC BY-ND:** This license allows reusers to copy and distribute the material in any medium or format in unadapted form only, and only so long as attribution is given to the creator. The license allows for commercial use.



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CC BY-ND includes the following elements:


BY  – Credit must be given to the creator


ND  – No derivatives or adaptations of the work are permitted



- **CC BY-NC-ND:** This license allows reusers to copy and distribute the material in any medium or format in unadapted form only, for noncommercial purposes only, and only so long as attribution is given to the creator.

CC BY-NC-ND includes the following elements:

BY  – Credit must be given to the creator

NC  – Only noncommercial uses of the work are permitted

ND  – No derivatives or adaptations of the work are permitted

7 THE CREATIVE COMMONS PUBLIC DOMAIN DEDICATION



CC0 (aka CC Zero) is a public dedication tool, which allows creators to give up their copyright and put their works into the worldwide public domain. CC0 allows reusers to distribute, remix, adapt, and build upon the material in any medium or format, with no conditions.

8 CHOOSING A LICENSE

The six licenses and the public domain dedication tool give creators a range of options. The best way to decide which is appropriate for you is to think about why you want to share your work, and how you hope others will use that work.

9 BEFORE LICENSING

Before you apply a CC license or CC0 to your work, there are some important things to consider:

The licenses and CC0 cannot be revoked. This means once you apply a CC license to your material, anyone who receives it may rely on that license for as long as the material is protected by copyright, even if you later stop distributing it.



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You must own or control copyright in the work. Only the copyright holder or someone with express permission from the copyright holder can apply a CC license or CC0 to a copyrighted work. If you created a work in the scope of your job, you may not be the holder of the copyright.

10 HOW TO APPLY A CC LICENSE OR CC0 TO YOUR WORK

CC-licensing your work is simple. All you have to do is choose the CC license that suits your needs and then communicate this choice in a way that will be clear to people who come across your work. As part of this communication, you should include a link to the license you've chosen.

This can be as simple as a bit of text stating and linking to the license in a copyright notice, like this:

© 2019. This work is licensed under a [CC BY 4.0 license](#).

...or as complex as embedding the license information on your website using the HTML code associated with the particular license. Use the [Creative Commons License Chooser](#) to get the relevant HTML code.

(Information taken from Cornell University Library and Creative Commons)