

Fair Use

What is Fair Use?

Section 107 of the United States Copyright Law allows for certain purposes for which the reproduction of a work may be considered fair. These purposes include criticism, comment, news reporting, teaching, scholarship and research. In order for a use to be determined to be fair, four factors are considered by the court.

1. Purpose and character of the use.
2. Nature of the copyrighted work.
3. Amount and substantially of the portion used in relation to the work as a whole.
4. The effect of the use upon the potential market for the copyrighted work.²

So what does that mean?

Fair Use is an exception that is meant to loosen copyright restrictions for educators (among others). However, it should not be confused with "free use". An educator must be aware of the "four factors" in order to avoid infringement.

Is there an easier way to use and license content?

Yes there is, Creative Commons.

CC Licenses

Attribution

CC BY



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Attribution -ShareAlike

CC BY-SA



This license lets others remix, tweak, and build upon your work even for commercial purposes, as long as they credit you and license their new creations under the identical terms. This license is often compared to "copyleft" free and open source software licenses. All new works based on yours will carry the same license, so any derivatives will also allow commercial use. This is the license used by Wikipedia, and is recommended for materials that would benefit from incorporating content from Wikipedia and similarly licensed projects.

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This license lets others remix, tweak, and build upon your work non-commercially, and although their new works must also acknowledge you and be non-commercial, they don't have to license their derivative works on the same terms.

Role of CC in OER

(Open Educational Resources)

Open Educational Resources (OER)

Open Educational Resources are teaching, learning and research resources that reside in the public domain or have been released under a copyright license that permits their free use and re-purposing by others.³

Creative Commons licenses allow educators to use/remix existing content to fit their specific purpose. CC also allows educators to create content that is available for re-purposing by others.

Example: A professor finds a new way to help students remember Maslows Hierarchy of Needs that proves to increase student retention of the subject. The professor posts this new method on their Canvas page. As a rule, this would automatically be copyrighted by the Professor. If another professor wanted to use this method for their class, they would have to get written permission from the original professor. With a CC license, anyone would be able to use the method, as long as they followed the requirements of the CC license.

CC Licenses

Gauge of Restrictiveness

Least Restrictive

Attribution CC BY

Attribution - ShareAlike
CC BY-SA

Attribution - NoDerivs
CC BY-ND

Attribution
NonCommercial
CC BY-NC

Attribution
NonCommercial
ShareAlike
CC BY-NC-SA

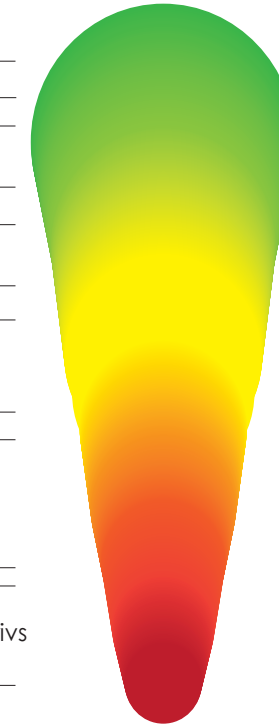
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Most Restrictive

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1 - www.creativecommons.org
2 - www.uscopyright.gov

3 - <http://www.pittstate.edu/office/tlcenter/initiatives/open-ed-resources.dot>
CC Logos from creativecommons.org were scaled down from original size.



~~All~~ Some
Rights
Reserved

Creative Commons (CC)
in Education



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What is CC?

Creative Commons is a nonprofit organization that enables the sharing and use of creativity and knowledge through free legal tools.

Their free, easy-to-use copyright licenses provide a simple, standardized way to give the public permission to share and use your creative work — on conditions of your choice. CC licenses let you easily change your copyright terms from the default of “all rights reserved” to “some rights reserved.”

Creative Commons licenses are not an alternative to copyright. They work alongside copyright and enable you to modify your copyright terms to best suit your needs.¹

CC in Education

CC can play a vital role in education by allowing true academic freedom. By utilizing CC licenses, an educator can control how their intellectual property is used, or if they would like for it to be used at all. They can also use content that is owned by others without worrying about copyright infringement, as long as they have followed the stipulations of the CC license.

CC helps eliminate the gray areas of copyright and Fair Use by giving clearly defined licenses.

CC Licenses

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This license lets others remix, tweak, and build upon your work non-commercially, as long as they credit you and license their new creations under the identical terms.

Attribution - NoDerivs CC BY-ND



This license allows for redistribution, commercial and non-commercial, as long as it is passed along unchanged and in whole, with credit to you.¹

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This license is the most restrictive of the six main licenses, only allowing others to download your works and share them with others as long as they credit you, but they can't change them in any way or use them commercially.¹

Public Domain



The Public Domain Mark enables works that are no longer restricted by copyright to be marked in a simple way, making them easily discoverable and available to others.¹ The **CC0** tool may be used at creativecommons.org in order to waive copyright worldwide.

Copyright vs. CC

Copyright law inherently protects original works with “all rights reserved”. This means that the creator of the work has exclusive rights to the use and distribution of their work.

If a creator wants to share their work in any manner, they must give written permission that outlines the specific uses that they will permit.

Creative Commons licenses give users more options. Instead of all rights being reserved, “some” rights can be reserved. If the creator wishes to share their work, but they wish to restrict certain types of use's of their work, they can choose from the different options that CC licenses provide.

CC licenses allow creators to customize their sharing experience. CC also allows a more effective sharing experience by reducing the learning curve associated with copyrights. Consider the following...

Comparison:

U.S. Copyright Law - 366 pages

Written in legal terminology that can be difficult to understand.

Creative Commons Licenses - Contained within this 10 page booklet.

Written in laymans terms.

Where to find CC

Creative Commons Search

search.creativecommons.org

Search through a variety of websites for content that ranges from images to music and video. All content is CC licensed.

Flickr

flickr.com

Flickr allows the option for every customer to use a CC license with their images when they are uploaded. Not all images on flickr.com are CC licensed. However, as of September 2015, there were over 350 million CC licensed images on Flickr.

Google

google.com

To search Google for images with CC licenses, you may click on the “images” tab after you have searched for your topic. Then click on “search tools” and “Usage rights”. Under the “Usage rights” tab, there are multiple options for filtering results.

Google.com/advancedsearch is a more powerful tool that may be used as well.

Wikimedia Commons

commons.wikimedia.org

Thousands of CC licensed remixed songs are available in nearly every genre.

FAQ/Myths

If Fair Use covers the use of copyrighted material for educational purposes, why do I need to worry about infringement?

Fair Use only allows for some loosening of copyright restrictions under some conditions. While faculty should maximize their fair use of copyrighted works, copyright and fair use exceptions are complicated. Creative Commons licenses are simple and straight forward.

Is there a certain percent of a work that I can copy without infringing?

Yes, but it is extremely obscure. If trying to meet the “brevity” clause of the Fair Use exception, you may only use 10% of a work of Prose. This is the **ONLY** percentage value that is mentioned in the Fair Use exception.

If someone infringes upon my CC license, can I sue them?

CC licenses are legally binding and backed by Copyright law. A history of case law involving CC is available on Wikipedia. However, it is recommended that in any copyright/CC infringement, you always attempt to resolve the issue out of court.