

Answering Copyright Questions at the Reference Desk: a Guide for Academic Librarians

Carla S. Myers

The University of Colorado Colorado Springs

Author Note

Carla S. Myers, Access Services Librarian, The Kraemer Family Library, The University of Colorado Colorado Springs

Correspondences concerning this article should be addressed to Carla S. Myers, The Kraemer Family Library, 1420 Austin Bluffs Parkway, The University of Colorado Colorado Springs, Colorado Springs, CO 80918.

Email: cmyers8@uccs.edu

Abstract

Copyright compliance is a major issue in higher education and more frequently academic librarians are being approached by students and instructors with questions as to how copyrighted works can be legally used for teaching and research. This article provides a brief orientation to U.S. Copyright Law and introduces print and online resources librarians can refer patrons to in order to make informed decisions regarding the use of copyrighted works.

Keywords: copyright, reference services, classroom instruction, online instruction

Answering Copyright Questions at the Reference Desk: a Guide for Academic Librarians

The influence of copyright on teaching and research is a major issue in the academic community. Many students and instructors understand enough about copyright to know when they are using works illegally (e.g., downloading bootlegged music and movies from the internet), yet are confused when trying to determine how they can legally use copyrighted works for teaching and research. More frequently academic librarians are being approached by scholars with copyright questions, but they often hesitate to answer them because they are unfamiliar with U.S. Copyright Law or are afraid of having their answers misconstrued as legal advice. In actuality, librarians do not need to be a copyright expert or attorney to help with these questions any more than they need to be an engineer to help with engineering questions. In such cases, they only need to know what resources are available to refer patrons to that provide quality information and allow them to make their own determinations.

Getting Started: a Basic Introduction to U.S. Copyright Law

Having a foundational knowledge of U.S. Copyright Law allows librarians to make better decisions when determining the scope of protection that applies to a work. Copyright law has a reputation for being difficult to interpret; however, the basics of the law can be mastered easily.

Securing Copyright

The U.S. Copyright Act, 17 U.S.C. § 102(a) states that copyright protection is automatically granted to “original works of authorship fixed in any tangible medium of expression.” This means that a work instantly receives copyright protection so long as it is not copied from another

and is formatted in a way that makes it perceptible by sight or sound. Fixation can occur in a variety of ways, including (but not limited to):

- A story, poem, or song written on paper
- A drawing, painting, or mural created on any type of canvas
- Sculpture crafted from clay, metal, or wood

Fixation can also occur with the assistance of a machine, such as

- Tape or digital recordings of songs, musical compositions, or sounds
- Film recordings of plays, dances, or pantomimes
- Image, text, or media files saved to a computer, web server, or other electronic storage device

Rightsholders no longer need to register their works with the U.S. Copyright Office or affix a notice (© year creator's name) in order to secure copyright as these requirements were done away with when copyright law was amended in 1989. However, many creators do still register their works and place the notice on them in order to indicate their ownership of its copyright.

Works Eligible for Copyright Protection

The types of works eligible for copyright protection are identified in The U.S. Copyright Act, 17 U.S.C §102(a):

- “Literary works¹
- Musical works,² including any accompanying words
- Dramatic works,³ including any accompanying music
- Pantomimes and choreographic works

- Pictorial, graphic, and sculptural works⁴
- Motion pictures and other audiovisual works⁵
- Sound recordings⁶
- Architectural works⁷

Works Not Eligible for Copyright Protection

The U.S. Copyright Act, 17 U.S.C. § 102(b) identifies certain types of works which are not eligible for protection, including:

- Ideas⁸
- Procedures and processes⁹
- Discoveries, including facts¹⁰

Copyright Ownership

The person who creates the work will usually hold the copyright. Joint copyright authorship occurs when two or more people decide to work together to create a work; then, so long as each person contributes significantly to the work,¹¹ each of them would have full rights in it. Another opportunity for copyright ownership occurs in *works made for hire*, which can occur one of two ways:

- (1) A copyrightable work is “prepared by an employee within the scope of his or her employment” (U.S. Copyright Act, 17 U.S.C. § 101). In such cases “the employer or other person for whom the work was prepared is considered the author” (U.S. Copyright Act, 17 U.S.C. § 201(b)).

(2) A copyrightable work is created by an individual or group at the request of another. In these instances the copyright may rest with the creator or the person who commissioned it; ownership will be determined by their negotiated and signed contract (U.S. Copyright Act, 17 U.S.C. § 201(b)).

Author's Rights

The U.S. Copyright Act, 17 U.S.C. § 106 grants the creators of copyrighted works certain rights, including the right to:

- Reproduce¹² the work
- Create derivative works¹³ based upon the original work
- Distribute¹⁴ copies of the work
- Perform¹⁵ the work publicly¹⁶
- Display¹⁷ the work publicly
- In the case of sound recordings, perform the work by means of a digital audio transmission¹⁸

Duration of Copyright

Section 302 of the U.S. Copyright Act (Title 17, United States Code) outlines the duration of copyright protection. It states that:

- Works created by an individual are protected for the life of the author and then 70 years after their death.
- Works of joint authorship are protected for 70 years after the death of the last surviving author.

- The copyright of anonymous works, works created under a pseudonym, and works made for hire lasts for 95 years from the date of publication or 120 years from the date of creation; whichever is shorter.

In Summary

It is very easy for a person to secure copyright for a work and these works are then protected for a long time. The rights granted under the U.S. Copyright Act allow creators to determine how their work is used.

Using Copyrighted Works for Teaching, Research, and Class Assignments

It is hard to imagine teaching a class, conducting research, or completing assignments without being able to use material whose copyright is owned by others. Fortunately, there are ways that students and instructors can legally use copyrighted works for educational purposes, including when:

- They own the copyright in the work, or
- The use falls under a statutory exemption, or
- The work is in the public domain, or
- The work is licensed as an Open Access or Creative Commons work, or
- They obtain permission for the use, or
- They acquire a license for the use.

Option 1: The Patron Holds the Copyright in a Work

People can freely use those works they have created and in which they have retained the copyright. For students, this can include works they have created in other classes or outside the academic setting. Instructors need to be aware of any limitations that may restrict the use of works they have created, including any that could be classified as a work made for hire.¹⁹ If they are interested in using works they have published they need to examine their publication agreements in order ensure that they have retained the right to do so.²⁰

Option 2: Taking Advantage of One of the Copyright Exemptions

Congress recognized that there would be certain situations where copyrighted works would need to be used by others, especially for teaching, research and preservation. As such, they created legal exemptions to the rights of authors that allow these types of uses. While there are many exemptions written into the law the ones that address educational uses by instructors and students are:

- Fair use
- Displays and performances in face-to-face teaching
- Displays and performances in distance learning (also known as the TEACH Act)

Fair Use. The fair use exemption found in the U.S. Copyright Act, 17 U.S.C. § 107 allows the public to make use of copyrighted works without obtaining the rightsholders' permission when engaging in activities "such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research." Making a fair use decision involves applying each of the four factors defined in this statute to the use. These factors are:

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

Fair use is the exemption that students and instructors are most likely to take advantage of when wanting to quote from or copy portions of copyrighted works.

Face-to-Face Teaching Exemption. This exemption can be used with copyrighted works for classroom instruction. The U.S. Copyright Act, 17 U.S.C. § 110(1) states that the “performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction” is not infringing “unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made²¹ under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made.” Popular classroom uses include:

- Reading text, stories, or poetry aloud
- Performing a play, pantomime, or choreography
- Displaying images
- Playing audio recordings or showing films

This particular exemption plays a critical role in promoting the sharing of knowledge through classroom instruction.

Distance Education Exemption. The Technology, Education and Copyright Harmonization Act (TEACH Act) was passed by Congress in 2002 to address copyright issues in distance education. The U.S. Copyright Act, 17 U.S.C. § 110(2) allows “The performance of a nondramatic²² literary or musical work or reasonable and limited portions²³ of any other work,²⁴ or display of a work in an amount comparable to that that is typically displayed in the course of a live classroom session.”

Compliance with the TEACH Act requires that the institution meet certain technological and policy requirements that are defined in the U.S. Copyright Act, 17 U.S.C. § 110(2):

- The institution must be an “accredited nonprofit educational institution.”
- The work is not one “produced or marketed primarily for performance or display” in digital distance education.
- The performance or display is not made with a copy “that is not lawfully made and acquired,” or that the provider “knew or had reason to believe was not lawfully made or acquired.”
- “The performance or display” of the copyrighted work “is made at the direction of, or under the actual supervision of an instructor as an integral part of a class session.”
- “The performance or display” of the copyrighted work “is directly related and of material assistance to the teaching content.”
- “To the extent technologically feasible,” the transmission of the work is limited to only those “students officially enrolled in the course.”

- The institution has copyright policies in place, and provides faculty, students, and relevant staff with information regarding copyright compliance.
- The institution “provides notice to students that materials used in connection with the course may be subject to copyright protection.”
- “In the case of digital transmissions,” for example sounds recordings and films, technological measures are applied that “reasonably prevent” students from retaining a copy of the work “for longer than the class session.”
- Technological measures are applied that reasonably prevent users from disseminating the work to others.

Option 3: Using Public Domain Works

Public Domain works have no copyright protection and can be used without fear of infringement. Works can fall into the public domain one of two ways;

- Their copyright protection has expired
- The work has been created by the U.S. Government

Expired Copyright. The copyright in any work created prior to 1923 has expired; therefore, students and instructors can use them in any way they wish, including:

- Making copies (physical or digital) and distributing them to others
- Making derivatives
- Publically performing or displaying the work

Many works created between 1923 and 1978 are still protected under copyright, however not all are. Works created during this period will have fallen into the public domain if the creator failed to comply with the formalities in place at the time, including:

- Inclusion of a copyright notice
- Renewal of copyright term²⁵

Determining the copyright status of works published during this time period can be difficult.

When in doubt, it is always best to treat the work as though it is fully protected under the law.

Appendix A lists websites which can be used to find information about and, in most cases, full text access to public domain works.

Works Created by the U.S. Government. The U.S. Copyright Act, 17 U.S.C. § 105 states that copyright protection is not available for works created by the United States Government which, according to the law (17 U.S.C. § 101), is a “work prepared by an officer or employee of the United States Government as part of that person’s official duties.” Crews (2012) warns that users should be cautious as there are some exemptions to this statute. Works funded by federal grants may be protected by copyright if they are created by nongovernmental employees. Works produced by the U.S. Government can also contain copyrighted components such as text, pictures, charts, tables, and graphs that were created as works made for hire by nongovernmental employees. Crews (2012) recommends that if there are questions regarding the copyright status of a governmental work the user should contact the author or agency that produced it to seek clarification.

Option 4: Using Open Access or Creative Commons Works

The creators of Open Access (OA) and Creative Commons (CC) works allow others to use their copyrighted works so long as they abide by certain license terms. These works are of special value to instructors and students looking to use them for teaching or class assignments as they do not need to worry about infringement so long as they follow the terms of the license.

Open Access Works. Suber (2012) defines OA literature as those works which are “digital, online, free of charge, and free of most copyright and licensing restrictions.” Open Access publishing serves the public in providing free and unrestricted access to scholarly works, and it also benefits authors by allowing them to retain many of the rights to their works. The licenses associated with most OA works allow users to download, print, copy, and distribute full text copies of the work so long as attribution is given to the original author. Before utilizing an OA work users should verify the license terms, which can usually be found on the website where they obtained the work from.

Appendix A lists websites which can be used to find full text access to quality OA journal articles.

The Creative Commons. The Creative Commons (<http://creativecommons.org/>) is a nonprofit organization that allows rightsholders to share their creative works with others using a royalty-free licensing model. According to their *About* webpage, these licenses “are not an alternative to copyright;” rather they “work alongside copyright” law to allow the rightsholder to

modify their claim “from all rights reserved” to “some rights reserved.” The CC’s *About the Licenses* webpage outlines the different types of licenses available. They include:

- Attribution: This license lets others copy, distribute, and build upon a work, commercially or noncommercially, as long as they provide credit to the original creator.
- Attribution--ShareAlike: This license lets others copy, distribute, and build upon a work, commercially or noncommercially, as long as they provide credit to the original creator and “license their new creations under identical terms.”
- Attribution--NoDerivs: This license allows others to distribute a work, commercially or noncommercially, “as long as it is passed along unchanged and in whole,” with credit being given to the original creator.
- Attribution--NonCommercial: This license lets others copy, distribute, and build upon a work in a noncommercial way only, as long as they provide credit to the original creator.
- Attribution--NonCommercial--ShareAlike: This license lets others copy, distribute, and build upon a work in a noncommercial way only, as long as they provide credit to the original creator and “license their new creations under identical terms.”
- Attribution--NonCommercial--NoDerivs: This license allows others to distribute a work in a noncommercial way only, “as long as it is passed along unchanged and in whole,” with credit being given to the original creator.

Works that can be found through the Creative Commons include video, music, images, literary works, and computer code.

Option 5: Obtaining Permission to Use the Work

If a person is unable to make use of a copyrighted work using one of the legal exemptions they can try contacting the rightsholder to obtain permission to use the work. Steps involved in the process include:

- Outlining the intended use
- Identifying the rightsholder
- Contacting the rightsholder to request permission for their use

A well-crafted permissions request will allow the rightsholder to gain an understanding of how much of their work will be used and for what purpose.

Option 6: Acquiring a License to Use a Copyrighted Work

If the rightsholders cannot be contacted or if they fail to grant permission for the use, the patron could then try licensing the use from a licensing agency, the most popular of which is the Copyright Clearance Center (<http://www.copyright.com/>). The *About Us* page of its website states that it provides pay-per-use licenses for purposes of copying, distributing, and posting works online, and replicating select “books, journals, newspapers, magazines, movies, television shows, images, blogs and ebooks.” To obtain a license, users visit the website’s *Get Permission* page and enter the items’ information into a search interface that then provides pricing details for various types of uses.

In Summary

Students and instructors can legally use copyrighted works for educational purposes when using any one of the six options listed above. However, they should realize that taking

advantage of these options requires thoughtful consideration and, when necessary, careful application of the appropriate law or license.

Answering Copyright Questions at the Reference Desk

Helping patrons find answers to their copyright questions can be fairly easy when librarians have a basic understanding of the law and knowledge of the tools and resources available to help instructors and students make sound copyright decisions.

The Reference Interview

Reference assistance should always begin with the reference interview which, according to Knoer (2011), allows the librarian to determine the “types and scope of information the patron needs.” When dealing with copyright questions, the librarians should ask the patron:

- Is the work in question protected by copyright?
- Who owns the copyright?
- How will they be using the work (e.g. copy, distribute, quote, transform²⁶)?
- Does they have access to a lawfully acquired copy?

Once these questions are answered the librarian should determine which options or legal exemptions are available to the patron, keeping in mind that their use could fall under several of them. The librarian should explain these options to the patron then direct them to the appropriate educational resources or tools that can help them determine how they can legally use the work.

Avoiding the Practice of Law

Black's Law Dictionary defines the practice of law as “The professional work of a duly licensed lawyer, encompassing a broad range of services such as conducting cases in court . . . preparing legal opinions on various points of law . . . and advising clients on legal questions.” Under no circumstances should a reference librarian attempt to provide a patron with legal advice on how to handle a particular situation. Rather, they should determine what type of legal information the patron is seeking and then refer them to the appropriate informational resources that allow them to make their own determination on how to act. If patrons need legal advice the librarian should advise them to contact a licensed attorney. Condon (2001) recommends that librarians direct patrons to the American Bar Association's Lawyer Referral and Information Service (<http://apps.americanbar.org/legalservices/lris/directory/>), which provides contact information for state and local agencies that can connect them with an intellectual property attorney.

Copyright Resources and Tools

There are a variety of resources and tools available that librarians can refer patrons to in order to learn more about copyright and help them make thoughtful, informed decisions when using copyrighted works. The resources and tools listed below are only a few of the many available that provide quality information on U.S. Copyright Law. When looking at other resources users should carefully consider the credentials of the author and the accuracy of the information.²⁷

Copyright Exemption Tools

These tools help users work through the compliance components of fair use and the TEACH Act. Librarians should refer patrons to these tools when they are unfamiliar with these exemptions or need assistance in utilizing them.

Fair Use Tools. These tools help users think through each of the four factors to determine if their use of a copyrighted work is fair or infringing.

Fair Use Evaluator

<http://librarycopyright.net/resources/fairuse/>

The Fair Use Evaluator was developed by Michael Brewer and the American Library Association's Office for Information Technology Policy Copyright Advisory Subcommittee in an effort to assist librarians, educators, and others in making a fair use decision (Myers, 2012). This tool has two specific components. The Evaluator takes users through the four factors, helping them decide if a use is fair or infringing. The *Learn More* section of the website is aimed at educating users about fair use (Myers, 2012).

Fair Use Checklist

<http://copyright.columbia.edu/copyright/fair-use/fair-use-checklist/>

Kenneth D. Crews' Fair Use Checklist is made available through the Columbia Copyright Advisory Office's website and is intended to help users think through the four factors of fair use. Users proceed through the list, checking off descriptions that weigh for and against fair use. When finished, they can use their answers to make a decision as to whether their use is infringing or not.

TEACH Act Tools. These online tools were created to help instructors and administrators understand the TEACH Act.

TEACH Act Toolkit

<https://library.uncc.edu/copyright/TEACH>

Developed by Peggy E. Hoon, the Scholarly Communications Librarian at the University of North Carolina at Charlotte, the TEACH Act Toolkit provides information on implementing and using this exemption. Resources found on the site include an explanation of the exemption, checklists to ensure compliance with the Act, a vocabulary guide, and answers to frequently asked questions.

Baruch College's Interactive Guide to Using Copyrighted Media in Your Courses

<http://www.baruch.cuny.edu/tutorials/copyright/>

Developed by The City University of New York's Baruch College Computing and Technology Center and Kognito Interactive,²⁸ this interactive tutorial helps instructors understand the legal requirements that must be met when using copyrighted audio works, audiovisual works or images in their online courses.²⁹ Their "Copyright Metro" serves as a flowchart for decision making. Users new to copyright will benefit from detailed information and narration provided at each "stop" in the decision making process. Those users already familiar with the requirements of the TEACH Act can use the Metro's "Map" feature to skip ahead to a specific point in the flow chart.

Permissions Tools

A good permissions request will allow rightsholders to determine which work of theirs the patron wishes to use and quickly ascertain the nature and scope of the use. Before the patron initiates the request he or she should carefully think through all aspects of their use, including how much of the work they need to use, for how long (e.g. one semester, several semesters, or several years), and any ways the work will be shared with others (e.g. photocopying, posted online or to a campus content management system).

Many large distributors of copyright works, including most major publishers, have online forms which patrons can use to request permission. Once patrons complete the form a representative of the person or organization will respond to the request letting them know if permission has been granted, under what terms, and if a fee is being charged for the use. Sometimes the work the student or instructor wishes to use is distributed by a small company or an individual who is unable to offer an online request service. In these instances patrons will need to draft their own permissions request.

Crafting the Request. Permissions requests should always be done in writing, which allows both parties to express their intent clearly. The document can then also be used for reference if there is ever a dispute regarding the use. Contacting the rightsholder by email rather than by post is preferable as it will likely yield a more timely response.

According to the Purdue University Copyright Office Website (<http://www.lib.purdue.edu/uco/Resources/permissions.html#basics>), a permissions request should include:

- The name of the person making the request, his or her title or position, and the name of his or her institution
- Their contact information including an email address, a physical address, telephone number, and fax number
- A full citation for the item the requestor wishes to use
- A complete and accurate description of how the work will be used, including if physical copies will be made or if digital copies will be posted online
- How many people will have access to the work (e.g., the number of students enrolled in the course)
- How long the work will be used for

Quality examples of permissions requests can be found on these websites:

Columbia University Copyright Office—Model Permission Letters

<http://copyright.columbia.edu/copyright/permissions/requesting-permission/model-forms/>

Copyright Crash Course Sample Written Request for Permission—The University of Texas at Austin Libraries

<http://copyright.lib.utexas.edu/permmm.html>

Other Resources

The following resources provide additional information on copyright, legal compliance, and campus copyright issues.

United States Copyright Office Website

<http://www.copyright.gov/>

This website provides information on the basics of the law as well as information brochures, historical documents, and *frequently asked questions* regarding the law. People can also use this website to register their works or search for registered works.

Institutional Resources. Librarians can also look to their institution policies, procedures, and personnel when helping patrons with copyright questions. Most colleges and universities have copyright policies in place to help guide the campus community's use of copyrighted resources. Some institutions also have a Copyright Office staffed by individuals trained to help instructors and students with their copyright questions. Librarians should find out if anyone in their institution's Office of General Counsel is especially knowledgeable about copyright and if they would be willing to offer copyright education courses or share their knowledge with others through workshops or one-on-one consultations. The library should also consider developing a copyright education website that directs patrons to institutional copyright policies as well as the tools and resources cited in this article.

Print Resources. Every academic library should have a copy of these titles in their reference collection:

Copyright Law for Librarians and Educators: Creative Strategies and Practical Solutions. By Kenneth D. Crews, Published by the American Library Association, 2012. This book can serve as a valuable reference tool for the entire campus community. Topics covered include:

- Discussion of the basics of US. Copyright Law
- An in-depth look at fair use
- A thorough explanation of the TEACH Act
- Music and copyright
- Seeking permission from rightsholders

The appendices include checklists for fair use, the TEACH Act, and a model letter for permission requests.

Complete Copyright for K-12 Librarians and Educators. By Carrie Russell, Published by the American Library Association, 2012. While this book is written specifically for K-12 librarians and educators much of the information is also applicable for higher education. The author provides many real-world examples and scenarios that will help users better understand the ways in that the law can be applied to various uses. Institutional administrators will find the chapter that deals with the use of copyrighted works in public performances (including plays and musicals, student clubs, and other extracurricular activities) informative.

The Complete Copyright Liability Handbook for Librarians and Educators. By Thomas A. Lipinski, published by Neal-Schuman Publishers, Inc., 2006. This book provides

comprehensive explanations of many aspects of U.S. Copyright Law, including:

- Direct, contributory, and vicarious infringement
- Penalties for infringement
- Immunities for libraries and schools found in the law
- Responding to copyright infringement claims
- Reproduction and distribution of copyrighted materials in the library
- Copyright compliance in distance education

This book will help librarians and educators understand what tools and policies they can employ to help limit their institution's liability against claims of infringement.

In Summary

When asked a question about copyright or how protected works can legally be used for teaching, research, or scholarship the reference librarian should use the reference interview in order to determine:

- If the work in question is protected by copyright.
- Who owns the copyright?
- What options are available for the patron to legally utilize the work?
- If the patron has access to a lawfully acquired copy of the work.

The librarian can then recommend appropriate educational resources and tools that patrons can use to learn about the law and make thoughtful and informed decisions regarding their use of the copyrighted work.

The flowchart provided in Appendix B can help librarians work through this process.

Appendix C provides case studies of commonly asked copyright reference questions.

Endnotes

¹Literary works can be fact or fiction and fixed in a print or electronic format. Examples include print copies of stories, poetry, and letters as well as electronic documents created using computer programs such as Microsoft Word or Excel.

²According to Lipinski (2006), a musical work represents “the expression of music, such as the score of a symphony or the sheet music of a song” (p xxx).

³A work can be considered dramatic if it “carries a story line and is intended to be performed before an audience” (Stim, 2010 p. 249).

⁴Works found in this category include “two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, diagrams, models, and technical drawings” (U.S. Copyright Act, 17 U.S.C. § 101).

⁵The U.S. Copyright Act, 17 U.S.C. § 101, defines motion pictures as “audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.”

⁶Sound recordings are “works that result from the fixation of musical, spoken, or other sounds” (U.S. Copyright Act, 17 U.S.C. § 101).

⁷According to the U.S. Copyright Act, 17 U.S.C. § 101, “an architectural work is the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings.”

⁸One’s expression of an idea can be copyrighted, but no one can copyright an idea itself. For example; members of a poetry club decide to write poems about Pikes Peak. No one member can copyright this idea and prevent others from writing about the mountain; rather each person’s poem gains copyright protection.

⁹Procedures and processes, along with systems and methods of operation are not protectable by copyright law but may be protectable under U.S. Patent Law.

¹⁰Crews (2012) states that “denying legal protection for facts . . . assures that everyone can build upon existing knowledge and share information.”

¹¹ In order to qualify as a “joint work” the contributions from each author must “be merged into inseparable or interdependent parts” of the whole work (U.S. Copyright Act, 17 U.S.C § 101).

¹²Reproduction occurs when a copy of a work is made, be it in part or in total.

¹³Derivative works are defined in the U.S. Copyright Act, 17 U.S.C. § 101 as works that are “based upon one or more preexisting works such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted.”

¹⁴Distribution involves sharing copies of the work, either for profit or not.

¹⁵According to the U.S. Copyright Act, 17 U.S.C. § 101, “to perform a work means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible.”

¹⁶The U.S. Copyright Act, 17 U.S.C. § 101 states that a public display or performance occurs “at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered.”

¹⁷The display of a work is defined in the U.S. Copyright Act, 17 U.S.C. § 101 as showing copies “of it, either directly or by means of a film, slide, television image, or any other device or process

or, in the case of a motion picture or other audiovisual work, to show individual images nonsequentially.”

¹⁸According to the U.S. Copyright Act, 17 U.S.C. § 101 a “digital transmission” is defined as “a transmission” of a work “in whole or in part in a digital or other nonanalog format.”

¹⁹Most higher education institutions allow instructors to retain the copyright in the works they have created. However, if instructors have worked at an institution where their works are considered to be works made for hire they will need to obtain permission from that institution in order to use the works at another institution.

²⁰Some publishers require that authors transfer full rights in their works over to them as a condition of publication. In these instances, authors may not be able to make copies of their work and distribute them to their students. Before signing a publication agreement authors should always carefully read it to ensure that they are retaining rights to use their works for noncommercial purposes, including teaching and making copies for classroom use.

²¹There are many ways for instructors and students to lawfully obtain a copy of a work, including using a copy they own, one owned by the institution or its library, or one acquired through a legitimate borrowing service such as Interlibrary Loan.

²²According to Crews (2012), nondramatic musical works include the “simple, unadorned playing of instruments, singing of songs, or performances of the musical work through broadcast on radio or television” (p. 115).

²³Here, “reasonable and limited” does not preclude a user from using the entire work. The instructors should think carefully about exactly how much of the work they need to convey their point or adequately cover a particular subject, then use that amount.

²⁴Here, “any other work” can include dramatic musical works, dramatic literary works, and audiovisual works.

²⁵Between 1908 and 1978 copyright was granted in terms of 28 years from the date of publication, with the option to renew the term for an additional 28 years. If rightsholders failed to obtain a term renewal, their work passed into the public domain.

²⁶Leval (1990) defines transformative uses as those that “employ the quoted matter in a different manner or for a different purpose from the original.” He states that examples of transformative uses can “include criticizing the quoted work, exposing the character of the original author, proving a fact, or summarizing an idea argued in the original in order to defend or rebut it. They also may include parody, symbolism, aesthetic declarations, and innumerable other uses.”

²⁷Beware of any copyright information which is based on common misconceptions about the law rather than the law itself. An example is the well-known “Agreement on Guidelines for Classroom Copying,” which were published in 1976. These guidelines try to place numerical limits on fair use, including using no more than 1,000 words or 10% of a work of prose, no more than 250 words from a poem, or one chart, graph, or diagram from a book or periodical. The fair use statute (U.S. Copyright Act 17 U.S.C. § 107) places no numerical limits on the amount of a work that can be used. These guidelines hold no force of law and abiding by them does not free the user from claims of infringement.

²⁸Kognito is owned and managed by Baruch College Alumni. According to its website (<http://www.kognito.com/about/>), Kognito’s online simulation programs “provide organizations with high quality and cost-effective solutions for training large or geographically dispersed audiences using engaging and effective learning tools.”

²⁹The Guide also provides information about the use of copyrighted works in the physical classroom.

³⁰Users should be aware that the items made available through Project Gutenberg's Self-Publishing Press (<http://self.gutenberg.org/ebooks/view/terms-gutenberg.aspx>) are protected by copyright.

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The U.S. Copyright Act, 17 U.S.C. § 101 - 810.

Appendix A: Finding Public Domain and Open Access Works

Finding Public Domain Works

The following websites provide information about public domain works and, in most cases, gives full text access to them. It is important for librarians to remind patrons that when they use public domain works they should provide proper attribution to the original creator.

Google Books

<http://books.google.com/>

Use the *Advanced Search* feature to search for titles published before 1923.

Hathi Trust

<http://www.hathitrust.org/>

The HathiTrust Digital Library is a digital preservation repository that provides users with full-text access to public domain works.

Project Gutenberg

<http://www.gutenberg.org/>

The full-text ebooks found on this site are freely available for use because their copyright has expired.³⁰

Finding Open Access Works

The following website can be used to search for quality Open Access journal articles.

Directory of Open Access Journals (DOAJ)

<http://www.doaj.org/doaj?uiLanguage=en>

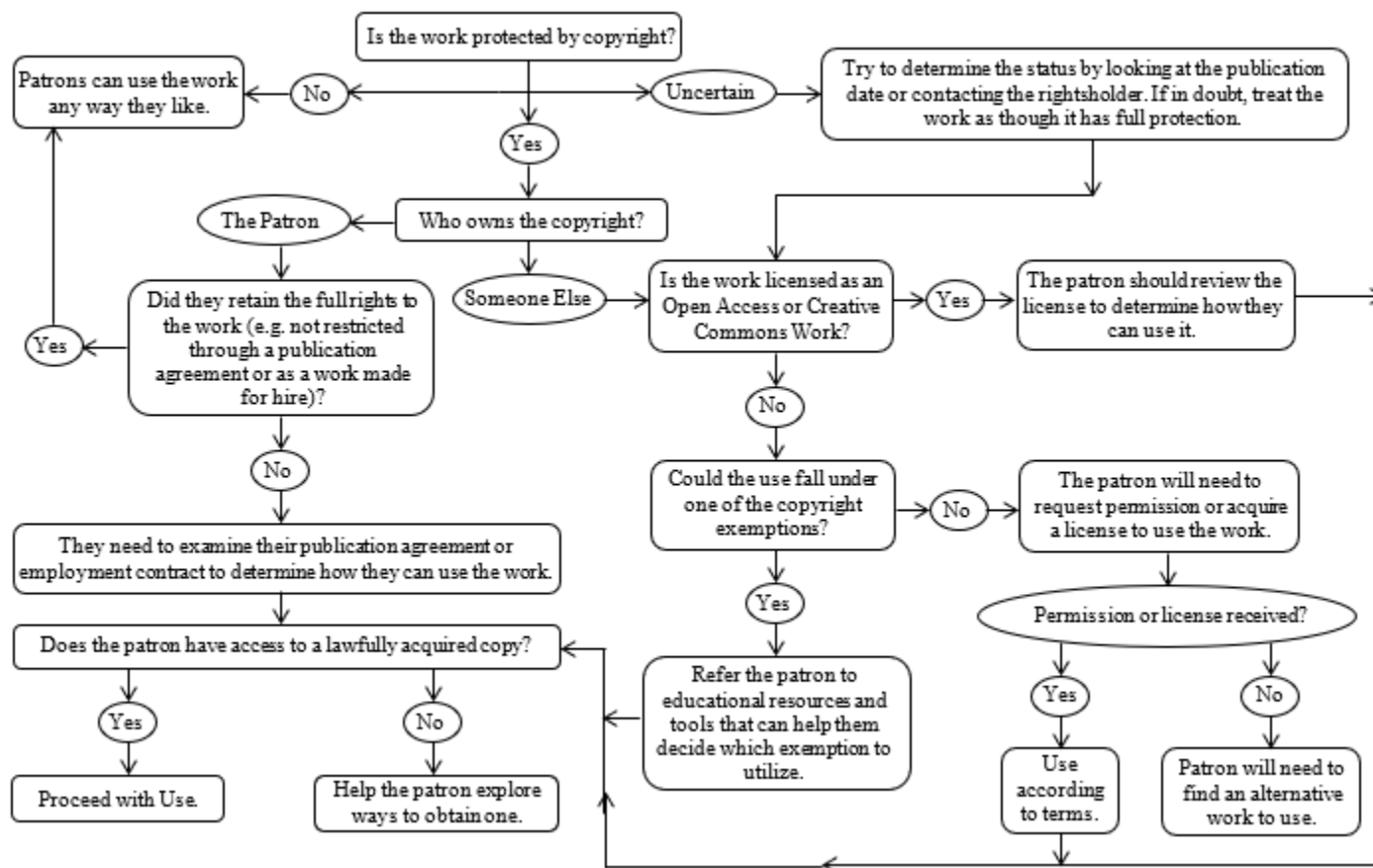
The Directory of Open Access Journals provides access to scholarly and peer-reviewed articles covering a wide variety of subjects including the sciences, arts, business and economics, history, philosophy, and religion.

Public Library of Science (PLoS)

<http://www.plos.org/>

The Open Access journals made available through PLoS concentrate on the sciences and medicine.

Appendix B: Answering Copyright Questions at the Reference Desk Flowchart



Librarians can use this flowchart to help patrons understand their options when using copyrighted works for teaching and research.

Appendix C: Case Studies

Below are examples of common copyright questions asked by students and instructors, sample reference interview analysis, and suggested answers.

Scenario 1

An instructor asks if it is okay to make a copy of an advertisement found in the local newspaper for each of the students in his Marketing 101 course. He wants his students to write an essay evaluating the quality of the ad and suggesting ways in that it can be modified to best attract the attention of different demographic groups.

Quick Analysis:

- Is the work in question eligible for copyright protection? *Yes.*
- Who owns the copyright for the work in question? *Someone other than the patron.*
- Could the use fall under one of the copyright exemptions? *Yes. Since they will be making copies of the work fair use should be considered.*
- Does the patron have access to a lawfully acquired copy? *Yes. Here a copy of the newspaper the instructor has purchased, or a copy owned by the library could be considered a lawfully acquired copy.*

Suggested Answer. Making copies of this ad to distribute to your students may be permissible under “fair use.”

Action. Direct him to fair use educational resources and tools so he can learn about the exemption and determine if this particular use would be considered “fair.”

Scenario 2

An instructor wants to know if it is okay to show a recent documentary film in her history class.

Quick Analysis:

- Is the work in question eligible for copyright protection? *Yes.*
- Who owns the copyright for the work in question? *Someone other than the patron.*
- Could the use fall under one of the copyright exemptions? *Yes, since she will be using it for classroom instruction, she could take advantage of 17 U.S.C. § 110(1).*
- Does the patron have access to a lawfully acquired copy? *Does the instructor own a copy? If not, can the institution or library purchase one to use, or can the person borrow a copy through Interlibrary Loan?*

Suggested Answer. U.S. Copyright Law (17 U.S.C § 110(1)) allows the performance of films in a face-to-face classroom setting so long as the copy you are using was lawfully acquired.

Action. Help the instructor find a lawfully acquired copy of the film.

Scenario 3

It is the first week of the semester and only half of an instructor's students have a copy of the class textbook as the campus bookstore did not order enough copies for everyone enrolled in the course. The bookstore has ordered more copies but they will not be available for purchase for at least a week. The instructor asks if it is okay to make copies of the first two chapters of the text for the students who do not yet have a copy so they do not fall behind in their assignments.

Quick Analysis:

- Is the work in question eligible for copyright protection? *Yes.*
- Who owns the copyright for the work in question? *Someone other than the patron.*
- Could the use fall under one of the copyright exemptions? *Yes. Since the instructor will be making copies of the work, fair use should be considered.*
- Does the patron have access to a lawfully acquired copy? *Does the instructor own a copy of the text, or does the library? If so these could be considered lawfully acquired copies.*

Suggested Answer. You may be able to use fair use for copying these two chapters to tide your students over until they can purchase a copy of the book.

Action. Direct the instructor to fair use educational resources and tools so he can learn about the exemption and determine if his copying would be considered "fair."

Scenario 4

A student in a theater course is looking for a popular work of fiction that she can rewrite as a screenplay.

Quick Analysis:

- Can she use works that are eligible for copyright protection? *Yes.*
- Who owns the copyright for the work in question? *Someone other than the patron.*
- Could the use fall under one of the copyright exemptions? *A screenplay is a derivative work; as such she would want to consider fair use. The patron could also use a public domain work or an appropriately licensed Creative Commons work, and would then not have to worry about making a fair use analysis.*
- Does the patron have access to a lawfully acquired copy? *If patrons are relying on fair use, they should obtain a lawfully acquired copy, which could be one that they have purchased, one owned by the library, or one borrowed through a legitimate borrowing service such as Interlibrary Loan. If they are using a public domain work any type of copy can be used. If they are using Open Access or Creative Commons works they can use any copy legally obtained according to the works' license.*

Suggested Answer. You may be able to apply fair use in order to create a derivative work such as a screenplay. Or you could use any work that is in the public domain without

having to make a fair use analysis or ask the rightsholder for permission. You could also use any Creative Commons work licensed as Attribution, or Attribution-Share Alike.

Action. If she wants to use a work that is protected by copyright then direct her to fair use educational resources and tools so she can learn about the exemption and determine if her making this derivative work would be considered “fair.” If not, help her search for works in the library’s catalog that were published before 1923, or direct her to Google Books, the Hathi Trust, or Project Gutenberg to search for or full-text public domain works. If she wishes to use a Creative Commons work, direct her to their website to search for appropriately licensed works.

Scenario 5

A student needs to write a research paper examining gun violence in popular media. He also needs to put together a PowerPoint presentation through which he will share his findings with his classmates. The student is interested in pulling quotes from current works of fiction, scholarly articles, and news reports for his research paper. He would also like to show images from books and graphic novels and clips from movies and video games as part of his class presentation. He asks how he can use all of these works without violating copyright.

Quick Analysis:

- Are the works in question eligible for copyright protection? *Yes.*
- Who owns the copyright for the work in question? *Someone other than the patron.*

- Could the use fall under one of the copyright exemptions? *Yes. Since he will be making copies of the works, fair use should be considered.*
- Does the patron have access to a lawfully acquired copy? *Does the patron own copies of the works? If not, can the institution or library purchase copies for him to use, or can he borrow copies through Interlibrary Loan?*

Suggested Answer. The legal exemption of fair use allows you to use quotes, images, and film clips for educational purposes. You will need to perform a fair use analysis for each work you wish to use.

Action. Direct him to fair use educational resources and tools so he can learn about the exemption and determine if his copying would be considered “fair.”

Scenario 6

An instructor is teaching an online course examining Computer-Generated Imagery (CGI) and would like to show her students clips from Peter Jackson’s film The Lord of the Rings: The Fellowship of the Ring where CGI is employed in creating special effects. She wants to know if she can legally do this and, if so, how many seconds of the film she can show.

Quick Analysis:

- Is the work she wishes to use eligible for copyright protection? *Yes.*
- Who owns the copyright for the work in question? *Someone other than the patron.*

- Could the use fall under one of the copyright exemptions? *Yes. Since she is teaching online the TEACH Act could be considered.*
NOTE: In order to take advantage of the TEACH Act the instructor and institutional administrators must work together in order to meet all of the requirements outlined in The U.S. Copyright Act, 17 U.S.C. § 110(2).
- Does the patron have access to a lawfully acquired copy? *Does she own a copy of the film? If not, can the library purchase a copy for her to use?*

Suggested Answer. The TEACH Act allows for the online performance of “reasonable and limited portions” of an audiovisual work, such as a film, in distance education classes. The Act does not place any numerical limits to how many seconds of a work can be used. Rather, you need think carefully about exactly how much of the work you need to convey your point or adequately cover a particular subject, and then use that amount.

Action. Direct her to TEACH Act educational resources and tools so she can learn about the exemption and ensure that she is meeting all the points of compliance found in the Act.

Scenario 7

An instructor asks if it is ok for him to print and distribute copies of an article that he has recently published to his class.

- Is the work he wishes to use eligible for copyright protection? *Yes.*

- Who owns the copyright for the work in question? *He will need to review his publication agreement to see if he retained the copyright in the article or if it has been transferred to his publisher.*
- Could the use fall under one of the copyright exemptions? *If he did sign the copyright in the article over to his publisher he may be able to rely on fair use to make and distribute the copies, unless his publication agreement expressly forbids it.*
- Does the patron have access to a lawfully acquired copy? *He should examine his publication agreement to see if he is able to make and distribute copies of the published version of the article.*

Suggested Answer. You will need to review your publication agreement to determine what, if any, rights you have retained in your article. If you retained full copyright or noncommercial educational reproduction rights then you can legally make and distribute copies to your students. If not, you may be able to utilize fair use in order to make the copies so long as your publication agreement does not expressly forbid it.

Action. If necessary, direct him to fair use educational resources and tools so he can learn about the exemption and determine if his copying would be considered “fair.”