



CHAPTER 17

Copyright Considerations Creation and Sharing

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The works students create are no longer limited to research papers. Today students are responsible for creating a wide variety of scholarship in both print and digital formats, including, but not limited to, manuscripts, PowerPoint presentations, photographs, graphics and art, music, and video recordings. US copyright law impacts almost every aspect of this creation process, from the reuse of third-party works in the new works student are creating to the copyright they hold in the works they have created. By learning about copyright, students empower themselves to make more informed choices when reusing third-party works and in managing the copyright they hold in the works they create.

Many students are familiar with the concept of intellectual property rights but do not possess the knowledge needed to make thoughtful applications of the law. When asked about copyright law, students are often able to articulate the ways in which common acts of infringement are carried out (e.g., illegal file sharing of songs and films online). However, when asked about how they manage the copyright in works they have created or reuse works of others in compliance with the law, students are often left speechless. The first step students can take to better understand US copyright law is to study the foundational provisions that identify how copyright is secured, the types of works eligible for copyright protection, copyright ownership, and the scope of protection provided under the law.

Copyright Basics

Securing Copyright

Copyright protection instantly vests “in original works of authorship fixed in any tangible medium of expression.”¹ This means that students automatically secure copyright protection as soon as their original thoughts and expressions are captured in a physical medium or a digital format.

The types of works that are eligible for copyright protection include:

1. literary works;
2. musical works, including any accompanying words;
3. dramatic works, including any accompanying music;
4. pantomimes and choreographic works;
5. pictorial, graphic, and sculptural works;
6. motion pictures and other audiovisual works;
7. sound recordings; and
8. architectural works.²

Students’ ability to secure copyright is limited only by their imagination and a medium available to them. Examples of this concept include

- a haiku written in a notebook
- a poster for an upcoming event saved in Publisher, or an architectural design saved in AutoCAD
- a diagram sketched on the back of a napkin
- a mural painted on a wall
- a sculpture crafted from rocks and clay gathered during a nature walk
- a model printed on a 3-D printer
- a picture captured on a digital camera
- choreography sketched out on a sheet of paper
- a video recording of their dog playing in fallen leaves captured on their smartphone
- a musical composition written on sheet music paper

Works Not Eligible for Copyright Protection

Certain types of works are not eligible for copyright protection. These works are identified in Section 102(b) of US copyright law and include but are not limited to facts, ideas, names, short phrases and slogans, procedures and processes, and discoveries. These types of works were specifically deemed by Congress to be ineligible for copyright protection to help “promote the progress of science

and useful arts,”³ which is the purpose of copyright outlined by the framers of the Constitution in Article I, Section 8, Clause 8. The fact that these types of works cannot be copyrighted can be alarming to students who are interested in gaining intellectual property protection for them, especially when it comes to new and unique ideas they may have; however, students may be able to pursue patent protection or trademark protection for some of these types of works.

Copyright Ownership

Generally, the person who creates the work holds the copyright in it. If two or more students work together to create a copyrightable work “with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole,”⁴ then that work may be considered a work of “joint authorship” and all the creators would share the copyright equally. When “a work [is] prepared by an employee within the scope of his or her employment or a work [is] specially ordered or commissioned for use as a contribution to a collective work,”⁵ it may be considered a “work made for hire.” US copyright law states that “In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author . . .and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.”⁶ Students may sometimes find themselves in work-made-for-hire situations. Examples include but are not limited to works created as part of a job or an internship or institution-sponsored grant work they perform with a faculty member. Talented students may be commissioned to create works that are eligible for copyright protection, for example:

- A music student is asked to compose a short piece of music to play in the background of an informational video.
- An art student is hired by a business owner to paint a mural in the entryway of her restaurant.
- A photography student is asked to take photographs at a wedding.
- An English major is asked by a family friend who works for the Chamber of Commerce to serve as the editor of a new visitor’s guide being prepared by the city.

If a student thinks that a work he or she is creating may fall into a work-made-for-hire situation, the student should speak with the person or organization employing him or her to obtain clarification on who will own the copyright in the work.

Scope of Copyright Protection

For those works that are eligible for copyright protection, US copyright law

grants to the creators the right “to do and to authorize any of the following:”⁷

1. to make copies of the work in a physical or digital format;
2. to prepare alternate versions of the work, called “derivatives” (examples could include a sound recording of a poem they have written or a translation of a manuscript);
3. to distribute copies of the work to others;
4. “in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;”
5. “in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and”
6. “in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.”⁸

Duration of Copyright

Copyrightable works created by an individual are protected for the life of the author plus seventy years. Works of joint authorship are protected for seventy years after the passing of the last surviving author. “In the case of an anonymous work, a pseudonymous work, or a work made for hire, the copyright endures for a term of 95 years from the year of its first publication, or a term of 120 years from the year of its creation, whichever expires first.”⁹

Rights Management

Once students understand how copyright is secured in works they create and the rights granted to them under the law, they can then think more carefully about how to manage these rights. One of the first steps in the rights management process should be identifying themselves as the copyright holder of the work. While creators are not required by law to place a notice of copyright on a work to secure copyright protection, including a notice will help users readily identify who the rightsholder is should they need to obtain permission to reuse the work or if they are interested in contacting the creator to pass along comments about it or discuss the work in more depth. The copyright notice should include

- the word *copyright*
- the copyright symbol ©
- the year of creation
- the creator’s/rightsholder’s name

For example: Copyright © 2017 Carla Myers

Normally the year included in the notice is the year when the work is first published. For unpublished works, the year the work was created should be used. Recently, some creators have also begun to include their email address in the copyright notice so that users can readily identify how to contact them. Should students decide to do this, they should be sure to include an email address that they check regularly.

Creators are also not required to register works with the US Copyright Office (USCO) to secure protection. However, registering a copyright with the USCO does provide some distinct benefits, including establishing a public record of ownership. The USCO has recently (2017) updated a circular it publishes on registration of copyrights that “provides guidelines for submitting a complete, accurate copyright claim” and that explores options for “completing online and paper applications, submitting a filing fee, preparing a deposit copy, communicating with the Office, [and] determining when [a] registration takes effect.”¹⁰ The circular can be found online at <https://www.copyright.gov/circs/circ02.pdf> and can serve as a useful guide for students looking to register with works.

Transfer of Rights

Under US copyright law, “the ownership of a copyright may be transferred in whole or in part” to another.¹¹ Stim states, “If a copyright owner transfers all of his rights unconditionally, it is generally termed an *assignment*. When only some of the rights associated with the copyright are transferred, it is known as a *license*.”¹²

If students are approached with a request for a copyright assignment, they should seek help from reputable resource, which could include an attorney or copyright librarian, for assistance with the process. More often, though, students are looking to share their works with others in a way that does not involve a full transfer of rights. In these situations, the use of licenses may be the best way to communicate this intent to the person looking to reuse the work or in identifying the ways in which they, as the rightsholders, are comfortable with others reusing their work.

Creative Commons Licensing

While students could technically write the license themselves or hire an attorney to do so, a series of readily available licenses have been made available through the Creative Commons (CC), which “is a nonprofit organization that works to increase the body of work (cultural, educational, and scientific con-

tent) that is available to the public for free and legal sharing, use, repurposing, and remixing.”¹³ The CC offers various types of licenses that allow students to authorize others to reuse their work under a set of predetermined conditions. These licenses include those shown in tables 17.1–17.4:

TABLE 17.1
Creative Commons Attribution License


	Attribution (CC BY)	https://creativecommons.org/licenses/by/4.0/
This license requires that the person reusing the work “must give appropriate credit [to the creator], provide a link to the license, and indicate if changes were made. [They] may do so in any reasonable manner, but not in any way that suggests the licensor endorses [them] or [their] use.”		
Source: “Attribution 4.0 International (CC BY 4.0),” creativecommons.org , accessed May 2017, https://creativecommons.org/licenses/by/4.0/ .		

TABLE 17.2
Creative Commons ShareAlike License


	ShareAlike (SA)	https://creativecommons.org/licenses/by-sa/4.0/
In addition to providing attribution, as outlined above, “if [users] remix, transform, or build upon the material, [they] must distribute [their] contributions under the same license as the original.”		
Source: “Attribution-ShareAlike 4.0 International (CC BY-SA 4.0),” creativecommons.org , accessed May 2017, https://creativecommons.org/licenses/by-sa/4.0/ .		

TABLE 17.3
Creative Commons NonCommercial License



	NonCommercial (NC)	https://creativecommons.org/licenses/by-nc/4.0/
Under this license, the user must provide attribution to the original creator, and their reuse of the work may not be for commercial purposes, which the CC defines as “not primarily intended for or directed towards commercial advantage or monetary compensation”		
Source: “Attribution-NonCommercial 4.0 International (CC BY-NC 4.0),” creativecommons.org , accessed May 2017, https://creativecommons.org/licenses/by-nc/4.0/ .		

TABLE 17.4**Creative Commons NoDerivatives License**

	NoDerivatives (ND)	https://creativecommons.org/licenses/by-nd/4.0/
<p>This license requires that users provide attribution to the original creator and, if they “remix, transform, or build upon the material, [they] ...not distribute the modified material.”</p>		
<p>Source: “Attribution-NoDerivatives 4.0 International (CC BY-ND 4.0),” creativecommons.org, accessed May 2017, https://creativecommons.org/licenses/by-nd/4.0/.</p>		

All CC licenses require Attribution (CC-BY). The other licenses can be used in conjunction with the CC BY license (e.g., Attribution-NonCommercial, or Attribution-NonCommercial-NoDerivatives) to specify reuse rights.

Restricting Reuse

Sometimes students wish to merely share their works with others by posting them online, but are not comfortable with anyone reusing the work in any capacity or without their express permission. In these situations, students should be sure to include a copyright notice on their work, followed by the phrase “All rights reserved.” While including this phrase will not negate any third-party reuse options found within the law (e.g., the fair use exemption found in Section 107 of US copyright law), it can serve as a helpful reminder for users that the rightsholder wishes to retain control over uses of the work.

Reuse Rights

US copyright law provides allowances, known as “exceptions,” for certain uses of copyrighted works by individuals who are not the rightsholder. Students should be aware of these exceptions as they can benefit from them, especially when looking to reuse copyrighted works created by others as part of works they are creating. While there are numerous exceptions written into the law (see 17 USC §§ 107–122), the exception best-known and most flexible is the fair use exception found in Section 107 of US copyright law. It states:

The fair use of a copyrighted work, including such use by reproduction in copies ...for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use

made of a work in any particular case is a fair use the factors to be considered shall include—

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.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.¹⁴

When making a fair use determination about reusing the copyrighted work of another, students must work carefully through the four factors found in the statute to determine if their reuse of a work might be considered fair or infringing. Tools and resources are available to help students work through a fair use decision, including

- *The Fair Use Evaluator* (<http://librarycopyright.net/resources/fairuse/index.php>). Developed by Michael Brewer and the Copyright Advisory Subcommittee of the ALA Office for Information Technology Policy (OITP), this tool is intended to help users “understand how to determine the ‘fairness’ of a use” as well as “collect, organize & archive the information [they] might need to support a fair use evaluation.”¹⁵
- *Thinking Through Fair Use* (<https://www.lib.umn.edu/copyright/fairthoughts>). Based on Columbia University Libraries Copyright Advisory Office Fair Use Checklist (<https://copyright.columbia.edu/basics/fair-use/fair-use-checklist.html>), this tool, developed by the University of Minnesota’s Copyright Services, “helps [users] structure [their] own reflections about the fair use factors, and provides a record that [they] did consider relevant issues.”¹⁶

Other Reuse Options

If the reuse of a copyrighted work does not fall within the scope of fair use or one of the other exceptions found in US copyright law, other options students can consider include the following.

Obtaining Permission to Reuse a Work

If the reuse of a work does not fall within the scope of fair use or one of the other exceptions found in US copyright law, the person wishing to reuse the work can reach out to the copyright holder and ask for permission to use the work. Both the permissions request and agreement should be done in writing or through email so there is documentation of the agreed-upon terms. Information on how to draft permissions requests and sample letters can be found on the website of the Columbia Copyright Advisory Office (<https://copyright.columbia.edu/basics/permissions-and-licensing.html>).

Obtaining a License to Reuse a Work

Sometimes when students reach out to rightsholders to inquire about permission to reuse a work, the rightsholder will agree, but only if the student pays a fee and agrees to very specific terms, which could include reuse in certain capacities (e.g., print or digital) and for a specific duration of time. In these situations, students will have to decide if the terms being extended are a good fit for their intended reuse and if they are amenable to paying the requested fee. If they enter into a license agreement with the rightsholder, they should require that all terms be set forth in writing and be signed by both parties.

Some publishers will require that license requests be submitted through their website using a standard form. Contact information will usually be made available on publishers' permissions websites that students can use to ask for assistance in framing their request or seeking clarification regarding license terms.

Using Creative Commons or Open-Access Works

Students themselves can reuse CC-licensed works in new works they are creating so long as they follow the terms of the license as identified by the rightsholder. The CC provides a useful search interface through which users can narrow search results based on format type and license type (<https://search.creativecommons.org/>).

Open-access (OA) publications provide another option for students looking to reuse the works of others. The Scholarly Publishing and Academic Resources Coalition (SPARC) defines OA as “the free, immediate, online availability of research articles combined with the rights to use these articles fully in the digital environment.”¹⁷ In addition to making their scholarly research freely available online, authors who publish OA works allows users to reuse their works for various purposes. Some OA works are published under CC licenses while others are published under license terms crafted by the author

or the journal the work is published in. Users should read these licenses carefully and ensure they are complying with any terms set forth by the author or publisher.

Using Public Domain Works

Public domain works do not have copyright protection and therefore can be used without fear of infringement. According to the USCO, “A work of authorship is in the ‘public domain’ if it is no longer under copyright protection or if it failed to meet the requirements for copyright protection.”¹⁸ Copyright has expired in works published or copyrighted before 1923 in the United States. Crews tells us that “the copyright to works published before 1989 may also have expired due to [the rightsholders’] failure to comply with formalities that copyright law once required.”¹⁹ The chart “Copyright Term and the Public Domain in the United States” developed by Peter Hirtle (<https://copyright.cornell.edu/publicdomain>) can be used by students looking to determine the copyright status of a work.

Section 105 of US copyright law states that any work created by an employee of the US government as part of his or her job responsibilities is also in the public domain. Examples include but are not limited to photographs taken by National Aeronautics and Space Administration, publications put out by the National Parks Service, and the Congressional reports.

Works may also be in the public domain if they consist primarily of facts. Examples include height charts, a ruler, and a multiplication table.

Citing Sources

If a student is reusing a Creative Commons work, then citing the source by providing attribution to the original creator is part of the license requirements. Providing attribution to the original creator of a work is not just tied to the reuse of CC works, though. Attribution is not required by law when reusing works under the fair use exception or when reusing public domain works. However, students should remember to accurately cite sources or provide credit to the original creators when reusing the works of others in order to avoid claims of plagiarism. Alternately, it is a common misconception that so long as a source is cited properly the user does not have to consider how copyright might apply to the situation. This is untrue. Merely citing a source does not negate claims of copyright infringement. Essentially, this means when reusing the works of others, students have two decisions to make: first, can they reuse the work in a way that is compliant with US copyright law, and, if yes, how can they properly cite the work or provide credit to the original

creator in order to avoid claims of plagiarism? Students can learn more about plagiarism and strategies for avoiding it through the Purdue Online Writing Lab (OWL) website (<https://owl.english.purdue.edu/owl/resource/589/1/>).

Finding Answers to Copyright Questions

Having a knowledge of the basics of US copyright law and the fair use exception will empower students to make more thoughtful decisions when it comes to managing the copyright in works they have created or reusing the works of others. There will be times when this knowledge is not enough to answer very specific questions regarding the law. In these situations, students can look to reputable resources and identify partners who can help them in finding answers to their questions.

Reputable Resources

Unfortunately, much of the information on US copyright law provided online is incorrect or misleading. The list below includes reputable resources through which students can find fact-based information on the law.

- *Copyright Law of the United States* (<https://www.copyright.gov/title17/>). Here students will find the full text of the law itself.
- *The website of the United States Copyright Office* (<https://www.copyright.gov/>). Here users can find a wide variety of tools and resources that can help them in understanding the law and guide them through the process of registering works.
- *The Stanford Copyright and Fair Use website* (<https://fairuse.stanford.edu/>). This resource, which is developed and maintained by the Stanford University Libraries, provides users with information about “copyright issues especially relevant to the education and library community, including examples of fair use and policies. Useful copyright charts and tools are continually added to help users evaluate copyright status and best practices.”²⁰
- *The Copyright Advisory Network* (<http://librarycopyright.net/>). Developed and maintained by members of the OITP, this website provides tools and resources on copyright as well as a forum where users can post questions about copyright that will be answered by librarians who have a specialized knowledge of US copyright law.

Partnerships

Libraries may have a designated staff member serving as a “copyright librar-

ian” who can help students work through copyright questions or find quality resources that can assist them in interpreting the law. Students can reach out to their local public or academic library to see if it has a librarian who provides copyright consultations and how they can get in contact with that person. Student can also reach out to a local chapter of the American Bar Association (ABA; <https://www.americanbar.org/directories/lawyer-referral-directory.html>) to see if it hosts any events or programming through which members of the public can receive free (pro bono) or reduced-cost consultations with an attorney who specializes in intellectual property law.

Other Intellectual Property Considerations

Students are not limited to securing copyright protection for works they create. Other types of intellectual property rights they can pursue include patents, trademarks, and servicemarks.

Patents

The United States Patent and Trademark Office (USPTO) defines patents as “the grant of a property right to the inventor, issued by the United States Patent and Trademark Office,”²¹ and it identifies types of patents available that include, but are not limited to

1. **Utility patents** [that] may be granted to anyone who invents or discovers any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement thereof;
2. **Design patents** [that] may be granted to anyone who invents a new, original, and ornamental design for an article of manufacture.²²

Generally, in order to have patent protection, the new work must

- have some usefulness (utility), no matter how trivial
- be novel (that is, be different from all previous inventions in some important way)
- be nonobvious (a surprising and significant development) to somebody who understands the technical field of the invention.²³

Trademarks and Servicemarks

Entrepreneurial students may be interested in starting their own business or developing a brand around a product or service they offer; this could be as simple as a tutoring service, or it could be a complex business venture. Other forms of intellectual property, trademarks and servicemarks, can help them in these endeavors. According to the USPTO, “A trademark is a word, name, symbol, or device that is used in trade with goods to indicate the source of the goods and to distinguish them from the goods of others, [and] a servicemark is the same as a trademark except that it identifies and distinguishes the source of a service rather than a product.”²⁴

Securing Patent and Trademark Protection

Unlike copyright, which is instantly granted, patents must be applied for and granted by the USPTO. Trademark and servicemark protection can exist without registration, but the benefits and protections are limited. As a result, if students are serious about protecting a brand they develop, they should consider registering their marks with the USPTO. While students can submit patent, trademark, and servicemark applications through the USPTO website (<https://www.uspto.gov/>), the process for doing so is somewhat more complex than registering a copyright with the USCO. Students looking to file applications may wish to engage the assistance of an attorney or use a legal website such as LegalZoom (<https://www.legalzoom.com/index-b.html>), both of which will require that students spend money, but which could turn out to be a worthwhile investment if their brand or business gains traction with consumers. Students struggling with start-up costs may wish to see if their local Bar Association or an ABA-certified law school located nearby offers these services pro bono or at a reduced cost.

Putting It All Together

Students should feel empowered and excited to share their creations with others and, as rightsholders, feel comfortable in taking advantage of the rights granted to creators under US copyright law. Students should also feel confident in their ability to use exceptions found in US copyright law when wanting to reuse the copyrighted works of others and, out of respect to their fellow rightsholders, do so in a responsible way. Creative Commons licensing provides students with convenient and easy-to-understand options for allowing others to use their work while ensuring they receive credit for its creation. In addition to copyright, students should also consider other areas of intellec-

tual property, including patent, trademark, and tradeservice law, that they can utilize to protect their creations. When students find themselves uncertain about certain applications of the law, they should seek partnerships with trusted individuals such as librarians, who they know can help them locate quality information about the law.

Notes

1. 17 United States Code, § 102(a).
2. 17 United States Code, § 102(a).
3. United States Constitution, Article I, Section 8, Clause 8.
4. 17 United States Code § 101.
5. 17 United States Code § 101.
6. 17 United States Code § 201(b).
7. 17 United States Code § 106.
8. 17 United States Code § 106.
9. 17 United States Code § 302(C).
10. US Copyright Office, *Copyright Registration*, Circular 2 (Washington, DC: Library or Congress, September 2017), 1, <https://www.copyright.gov/circs/circ02.pdf>.
11. 17 United States Code § 201(d)(1).
12. Richard Stim, “Copyright Ownership: Who Owns What?” Stanford University Libraries Copyright and Fair Use, accessed May 2017, <https://fairuse.stanford.edu/overview/faqs/copyright-ownership/>.
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