

Copyright, Fair Use, and Creative Commons Licensing: Script

Slide One (1)

Greetings! Welcome to Copyright, Fair Use, and Creative Commons Licensing! My name is Dr. Megan Lowe. I am the Director of University Libraries at Northwestern State University of Louisiana. I am located at the main campus of Northwestern, which is located in Natchitoches. My 'home' library is Watson Memorial Library. In keeping with the topic of today's presentation, please note that this presentation is licensed under a Creative Commons Attribution-ShareAlike License. What that means exactly will be discussed in this presentation!

Slide Two (2)

What all will we be discussing today? Well, I am going to define copyright, fair use, and Creative Commons Licensing, also known as C-C-L. I will explore how they work and how you as an educator can stay compliant with each of these in the course of the work you do. There is also a brief list of references at the end which I used for this presentation. Including a list of references is good copyright practice, which will become clear as we go through each topic!

Slide Three (3) - *animation*

Copyright, as defined in the U.S. Code, is "a form of protection provided by the laws of the United States (title 17, U.S. Code) to the authors of 'original works of authorship,' including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works." Copyright law can be found in just about every country, and it can be very similar from country to country, but one should be quite careful about making assumptions with

regard to how copyright in one country compares to copyright in another.

Now, a few things to note about this definition.

- A work does not have to be published to be copyrighted. If you write an original poem or song, it is automatically afforded a certain level of copyright protection in this country.
- “Certain other intellectual works” is usually understood as a way of the law attempting to keep up with technology and new forms of content/media. That’s why blogs and vlogs can be copyrighted. They are intellectual property, and copyright protects that.
- Being out of print, also known as O-O-P, does not affect a work’s copyright status. At my previous institution, a professor scanned a whole book and put it in her Moodle course. A colleague confronted her about this being a copyright violation, so she reached out to me for clarification. She told me the book was out of print so she thought it was okay. I told her that because the book was still copyrighted, it was copyright infringement. She did not initially understand that being OOP was not the same as being out of copyright.

Slide Four (4) - *animation*

There are few key things to understand about copyright.

- It is a bundle of rights intended to protect the author or copyright holder.
- It has commercial implications (this is a really key element to this discussion).
- These rights can be signed away and frequently are, which is how many publishers acquire the rights to works and authors lose control of their works. For example, Winnie-the-Pooh was written by A.A. Milne. At some point, Disney acquired select rights to Winnie, and so Disney owned Winnie in certain ways. It was able to create a lot of content based on those rights. However, in 2022,

the copyright on the *original* work by A.A. Milne expired and entered the public domain, meaning that Milne's version of the lovable yellow bear and his buddies can now be used by anyone. Disney no longer has exclusive rights to the honey-loving bear.

There is a certain degree of copyright that is automatically conveyed on a work created in the United States. However, if you want to ensure full and legal protection under copyright, you must apply officially for copyright (there's a form and a fee to pay).

In most settings, particularly commercial ones, in order to use copyrighted work, formal, documented permissions must be obtained for the copyright holder(s) – this could be the author themselves, their publisher, their estate, or some other legal entity. In some cases, it might require the payment of fees for the purposes of licensing.

Slide Five (5) – *animation*

So, that's a quick overview of copyright. We're also looking at fair use today. So, what is fair use? Fair use is a statute under copyright law that allows for the use of limited portions of a work that has copyright **WITHOUT** having to have official permission(s) from the official copyright holder.

It was created for the purposes of education and research, i.e., teaching, learning, and scholarship.

However, it is a little harder to pin down than copyright: after all, what qualifies as a limited portion of a work?

I usually ask my audience to guess what qualifies as a limited portion of a work, bearing in mind that we're talking about prose, poetry, paintings, photographs, images of 3D objects, songs (where music and lyrics can be copyrighted separately), and a variety of other work types. How many words from a book? How many lines of poetry? What percentage of an image? How many bars of a song?

Slide Six (6)

Apologies – this is a trick question. The Copyright Office isn't very helpful on defining what a "limited portion" is. It only states that "there is no specific number of words, lines, or notes that may safely be taken without permission." When using someone else's work, it's best to always give credit where credit's due (that is, attribution and documentation), even if using only a small part. If you're unsure, then ask for permission.

It's worth noting that APA format has its own ideas about what a limited portion is and recommends that 500 words or less is safely within fair use. Beyond that, permissions should be obtained. But APA does not necessarily address other formats (e.g., images or music) and how much would qualify as fair use or abuse of fair use (i.e., copyright infringement).

Slide Seven (7) – *animation*

So, that's copyright, and fair use, which is part of copyright – a very beneficial part of copyright for those of us working in education. The next concept is Creative Commons Licensing, also known as C-C-L. What is it?

CCLs are "legal tools that creators and other rights holders can use to offer certain usage rights to the public, while reserving other rights" (Creative Commons, n.d.b).

Some people consider CCL to be anti-copyright. It is not anti-copyright. In fact, it is built on the fundamentals of copyright. Creative Commons (n.d.b) wants to "help those who want to encourage reuse of their works by offering them [the works] for use under generous, standardized terms; those who want to make creative uses of works; and those who to benefit from this symbiosis."

Functionally, CCL allows creators to offer a spectrum of options ranging from retaining all of the rights commonly associated with copyright and

giving up all rights (that is, public domain). Creative Commons calls this approach “Some Rights Reserved.” In other words, where copyright represents a bundle of rights, CCL is essentially an unbundling of those rights.

Slide Eight (8) – *animation*

There are six (6) Creative Commons licenses:

1. Attribution (CC BY): public domain is the most permissive of copyright concepts; attribution is the next most permissive license. Other people can take your work and “distribute, remix, tweak, and build upon” that work, even commercially, but they must credit you for the original work (Creative Commons, n.d.a).
2. Attribution-ShareAlike (CC BY-SA): this is the license I’m using for this presentation. Similar to Attribution in what others can do with your original work and giving you credit BUT ALSO the remixers must also license what they create using the same terms. Creative Commons (n.d.a) compares this practice to “copyleft” free and open source software licenses.” If you wanted to reuse this presentation, you can – you change it up a bunch, rework the language or presentation, add material, take it away. You will still have to attribute the original work to me. And when you license the work, you will have to also license it using CC BY-SA so that others can reuse your work.
3. Attribution-NoDerivatives (CC BY-ND): This license permits both commercial and non-commercial redistribution of your work, but the work cannot be changed and must remain in its entirety, and credit must be given to you. And yes, that’s right – someone could make money off your work under this license. But so could you!

Slide Nine (9) – *animation*

4. Attribution-Noncommercial (CC BY-NC): Other people can build on, remix, and tweak your work but only for non-commercial purposes; their new works must credit your original work and also

be non-commercial. However, any of their derivative works do not have to be licensed on the same terms. In other words, if they use your work, they can only do so non-commercially – they can't make a buck on your work and they have to give you credit. But any of the derivatives they make of your work can be licensed in any way they want.

5. Attribution-Noncommercial-ShareAlike (CC BY-NC-SA): Other people can build on, remix, and tweak your work but only non-commercially; they must credit your original work AND license their new works (the derivatives) under the same terms.
6. Attribution-Noncommercial-NoDerivatives (CC BY-NC-ND): This is the most restrictive of the CCLs. Other people can download or make copies of your creations and share them provided they credit you. However, they can't modify your works at all or use them commercially.

Slide Ten (10)

On this slide we see visualizations of CCL spectrum of openness. The image on the left shows the spectrum of licenses, with public domain being represented at the very top of the spectrum. It is the most open and permissive of copyright concepts. The image on the right shows the visualizations or buttons of the six CCLs. The one on the top left is Attribution; the one below that is Attribution-ShareAlike; the one on the bottom left is Attribution-NoDerivatives. The one on the top right is Attribution-Noncommercial; the one below that is Attribution-Noncommercial-ShareAlike. The one on the bottom right is Attribution-Noncommercial-NoDerivatives.

Slide Eleven (11)

So, how do these concepts work?

Copyright is a bundle of rights. All of those rights are reserved by the copyright holder. Copyright is primarily for protecting commercial interests or intellectual property rights. If you want to use an original

work, you have to obtain explicit, formal permission. This may involve fees. Copyright can be transferred; a copyright holder may not be the original creator.

Fair use is a statute under copyright law. The concept of the bundle of rights still applies. Consequently, all rights are still reserved. However, it is meant to foster education and research. This is why we can teach and do research and enhance the learning of our students and NOT have to necessarily obtain permissions (or pay fees) for what we do. However, attribution and documentation are critical – this is giving credit where credit is due and demonstrating the use of those copyright works in the specific contexts of education and research. Fair use disclaimers (which I will discuss shortly) can be employed to acknowledge teaching and learning contexts as well.

CCL is built on copyright. Some rights are reserved – the original creator can decide how their work can be used (or not used). CCL is meant to foster the creation, sharing, and re-imagining of content shared via the Internet. CCL is a very important part of open access (OA) and open educational resources (OERs). CCL uses licenses and buttons (seen on the previous slide) to make it clear that traditional copyright is not in play and how a work may be used.

Slide Twelve (12)

Though all of these concepts are related and interrelated, how one stays compliant within each of them varies a little. But there are similarities.

With copyright, if you use someone else's work, you have to get permission to use that work. This may involve paying licensing fees. It may also be as simple as obtaining formal, explicit permissions from the copyright holder. Attribution and documentation are critical.

With fair use, attribution and documentation are also critical – giving credit where credit's due. It's a good idea to ensure that you have fair use disclaimers attached or associated with any copyrighted material you

are using. If you think you are using a lot of resource and think you may be reaching beyond fair use, get permission(s).

With CCL, attribution and documentation are also critical – again, giving credit where credit’s due. It’s a good idea to ensure that licenses and buttons are prominently displayed. It is also critical that you fully abide by the terms of the license of the material you are using. That is to say, if something is ShareAlike (SA), then you must ShareAlike (SA) as well.

Slide Thirteen (13)

This is an example of a fair use disclaimer currently being used by the *Syracuse Journal of Science and Technology Law*. This is good for websites and for copyright materials you may be sharing, using, or posting in a course. It states that the site is for educational purposes only. It claims fair use by stating “Copyright Disclaimer under section 107 of the Copyright Act of 1976, allowance is made for ‘fair use’ for purposes such as criticism, comment, news reporting, teaching, scholarship, education and research. Fair use is a use permitted by copyright statute that might otherwise be infringing. It also defines fair use by stating that it is “a doctrine in United States copyright law that allows limited use of copyrighted material without requiring permission from the rights holders, such as commentary, criticism, news reporting, research, teaching, or scholarship. It provides for the legal, non-licensed citation or incorporation of copyrighted material in another author’s work under a four-factor balancing test.” This presentation will not examine the four-factor balancing test of fair use, as that’s a whole presentation itself.

Slide Fourteen (14)

And we have reached the end of the presentation! These are the resources which have been employed throughout this presentation. The Creative Commons website has a lot of great resources for individuals

seeking to use CCLs. The Copyright Office is the go-to resource for all things copyright related.

Slide Fifteen (15)

Thank you for your attention! Thank you for taking the time to come learn about copyright, fair use, and Creative Commons Licensing. If you, your colleagues, or students have questions or concerns about copyright, fair use, and/or CCL in the future, please don't hesitate to reach out to me via email at loweme@nsula.edu.