

Jane E. Davis, Esq.
Assistant General Counsel
The City University of New York

DO I NEED PERMISSION?

1. Is the work protected by copyright?

If the work is not copyrightable or is in the public domain, permission is not required to use the work. If the work IS copyrightable and is NOT in the public domain, go to Question 2.

Some examples of works not protected by copyright are:

- facts and factual works, such as directories;
- works that lack originality, including unoriginal reprints of public domain works;
- most U.S. government works;
- ideas, processes, methods and systems described in copyrighted works;
- works that are specifically put into the public domain by their authors or the owner of the copyright, such as freeware; and
- works in the public domain.

To help determine whether the work is in the public domain, see the excellent chart "[When Works Pass Into the Public Domain](#)" prepared by Lolly Gasaway of the University of North Carolina.

The Copyright Office offers several resources for searching copyright, including [on-line searches](#) and [Circular 22: How to Investigate the Copyright Status of a Work](#) to assist copyright research.

2. Does CUNY have a license to use the work or is it otherwise made freely available for educational use?

CUNY Licenses:

CUNY has licenses with many providers of on-line databases of academic journals, news articles, images, etc. These databases may be accessed from the [E-](#)

[Journals and Reference Databases](#) page of the CUNY Office of Library Services web site on cuny.edu. Your college library may also have licenses for other databases, such as the image database ARTstor, that aren't available CUNY-wide.

Some licenses allow educational uses such as making copies for classroom use and linking directly to the article for educational purposes. If CUNY has a license for the work that covers your proposed use, no further authorization is required. If your use is NOT covered, go to question 3.

Two examples of databases licensed by CUNY are:

- *J-STOR*, a database of academic journals. CUNY's license permits authorized users to link to full text articles (so long as those accessing the articles via the links are also authorized users, such as students).
- *AccuNet/AP Multimedia Archive*, a database of Associated Press photos. CUNY's license permits users to view and print out photos and to make copies for class handouts, research, in multimedia presentations, and other educational uses.

CUNY also has licenses with ASCAP and BMI, performing rights organizations which license and distribute royalties for the non-dramatic public performances of the copyrighted musical works of their members. CUNY's licenses permit the University community to perform music from ASCAP's and BMI's catalogue, including such uses as dance performances, concerts, and student club events. Other uses of music, such as college radio broadcasts and webcasts, dramatic music performances (opera, musicals, etc.), and making copies of or re-recording existing records, tapes and CDs, may require different and/or additional licenses.

Works Freely Available for Educational Use:

Several sources provide art, architectural and other visual images that may generally be used freely and without further authorization for non-profit educational purposes. Some examples are:

[AICT – Art Images for College Teaching](#) is a database of art and architectural photographs by art historian and photographer Allan T. Kohl. Images may be used by academic institutions freely and without further authorization in conjunction with educational activities such as teaching, research, and scholarly publication.

[Digital Imaging Project](#) consists of art historic images of sculpture and architecture from pre-historic to post-modern, by Mary Ann Sullivan, Bluffton College. Images may be used freely for personal or educational purposes.

[Metropolitan Museum of Art](#) permits schools to put unaltered images or text from the Museum's website on a file server at the school if electronic distribution is of limited

term to the school only, the images remain unaltered, all of the accompanying caption information is included without alteration, and the citation includes the URL "www.metmuseum.org."

[The Society of Architectural Historians Image Exchange](#) has a database of American and world survey architectural images. Most images may be used freely for non-profit educational purposes.

[U.S. Government Image Libraries](#) include thousands of public domain photographs of everything from fish to firefighters.

[WorldImages](#) provides access to the California State University IMAGE Project. Its images may be freely used for non-profit educational purposes.

3. Do you want to display, perform or transmit the work, including for distance learning?

The Copyright Act exempts certain educational uses from liability for infringement. These are bright-line rules. If your proposed use meets these requirements, as described in Questions 3 – 5, permission is not required to use the work. If your proposed use does NOT fall within any of these exemptions, go to Question 6 to see if the general fair use provisions apply.

Use in Face-to-Face Teaching (§ 110(1) of the Copyright Act)

Who: Teachers and students at nonprofit educational institutions

What: Perform or display copyrighted works, including showing lawfully made copies of movies and videos, playing music, performing plays, showing art works, etc. in the course of face-to-face teaching in a classroom.

Excludes: Photocopying of materials for classroom use, making of course packs, on-line uses, or any other reproduction, distribution or making of derivative works. Refer to Questions 4, 5 and 6 for these uses.

Electronic Transmission of certain works [TEACH Act] (§ 110(2) of the Copyright Act)

Who: Accredited nonprofit educational institutions

What: Teachers and students may transmit (e.g., via the internet):

- the performance of ALL of a non-dramatic literary or musical work (poetry & short story readings, all music other than opera, musicals)

and music videos)

- REASONABLE AND LIMITED PORTIONS of any other performance (includes all audiovisual works, plays, opera, musicals and other dramatic musical works)
- displays of any work in AMOUNTS COMPARABLE TO TYPICAL FACE-TO-FACE displays (includes photographs and other still images)

Excludes:

- works produced or marketed primarily for in-class use in the digital distance education market;
- works the instructor knows or has reason to believe were not lawfully made or acquired;
- textbooks, course packs and other materials in any media typically purchased by students for their independent use.

Additional Conditions: The performance or display must be:

- A regular part of a systematic mediated instructional activity;
- Made by, at the direction of, or under the supervision of the instructor;
- Directly related and of material assistance to the teaching content; and
- For and technologically limited to students enrolled in the class.

CUNY must:

- Have policies and provide information about, and give notice that the materials used may be protected by, copyright;
- Apply technological measures that reasonably prevent recipients from retaining the works beyond the class session and further distributing them;
- Not interfere with technological measures taken by copyright owners that prevent retention and distribution.

In a nutshell: The TEACH Act is intended to cover classroom-type instruction

delivered on-line. It does not cover materials an instructor may want students to study, read, listen to or watch on their own time outside of class. For these uses, the instructor must continue to rely on the principals of fair use.

Additional resources on the TEACH Act:

[TEACH Act Toolkit](#) - A joint project of the North Carolina State University Libraries, Office of Legal Affairs and DELTA

[The TEACH Act Finally Becomes Law](#) – a description of the law and checklist from The Copyright Crash Course at the University of Texas

[TEACH Act materials](#) from Copyright Management Center of Indiana University - Purdue University – Indianapolis

4. Do you want to make archival copies of the work?

Section 108 of the Copyright Act classifies certain types of copying of copyrighted works by libraries and archives as educational fair use. If your proposed use meets these requirements, permission is not required to use the work. If your proposed use does NOT meet the requirements, go to Question 6 to see if the general fair use provisions apply.

Who: Nonprofit libraries and archives

What: Make up to 3 copies of a work for purposes of preservation or interlibrary loan. Copies can be either analog or digital, provided that digital copies are only made available to the public on the library premises.

Copy a work into a new format if the original format is obsolete (e.g., the machine or device used to perceive the work is either no longer manufactured or is not reasonably available in the commercial marketplace).

5. Do you want to make photocopies of the work for classroom use?

The Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions with Respect to Books and Periodicals, reprinted in the Copyright Office's [Circular 21: Reproduction of Copyrighted Works by Educators and Librarians](#), is included in the legislative history of the Copyright Act and provides a safe harbor for educational fair use. The rules are stringent. Copying must meet tests of brevity, spontaneity and cumulative effect, which are summarized below.

Summary: Multiple copies (not to exceed more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion; provided that the copying meets the following tests. Each copy must include

prominent copyright notice.

- Brevity
 - Either (1) a complete article, story or essay of less than 2,500 words, or (2) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.
 - A complete poem if less than 250 words and if printed on not more than two pages, or an excerpt of not more than 250 words.
 - One chart, graph, diagram, drawing per book or periodical issue.
- Spontaneity

The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.
- Cumulative Effect

The copying of the material is for only one course in the school in which copies are made.

 - Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during a term.
 - There shall not be more than nine instances of such multiple copying for one course during a term.

NOTE: A course pack never falls within the Guidelines.

If your proposed use does not meet the stringent rules of the Guidelines, go to Question 6 and conduct a regular fair use analysis.

6. Does the proposed use constitute “fair use”?

Section 107 provides that the fair use of copyrighted work for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether a use is fair, four factors must be considered. A fair use analysis involves balancing the four factors. If the weight of the factors leans towards "favorable to fair use," then permission is not required. If the weight of the factors leans towards "unfavorable to fair use," then the use is not likely to be considered fair use and

permission from the copyright owner must be obtained.

Conducting a fair use analysis can seem difficult. Reasonable people can come to different conclusions regarding the same use. At the end of this section are a series of links to web sites with some simple fair use guidelines for specific situations faced by educators.

If after conducting a fair use analysis you think that permission is required, go to Question 7.

FACTOR 1 - Purpose and Character of the use.	
Favorable to fair use	teaching, scholarship, research, non-profit, personal use
Unfavorable to fair use	intent is to derive commercial benefit
NOTE: Parody, criticism, commentary, news reporting, and other transformative uses are core fair uses. If combined with other uses, they add weight to make them more fair.	
FACTOR 2 - Nature of the copyrighted work	
Favorable to fair use	factual, published
Unfavorable to fair use	imaginative, consumable materials (e.g., workbooks, answer sheets, surveys), unpublished
Little effect on balance	mixture of factual and imaginative
FACTOR 3 - Amount and Substantiality of portion used.	
Favorable to be fair use	small amount relative to the entire work
Unfavorable to fair use	an entire work, more than a small amount of the "heart" of the work
NOTE: The importance of this factor varies depending on whether the proposed use is educational or commercial.	
FACTOR 4 - Effect on the potential market for the work	
Favorable to fair use	Original is out of print or unavailable. No ready market for permissions. Reasonable attempts to obtain a copy or permission to copy have been documented.
Unfavorable to fair use	Use substitutes for purchase of the original work, or the work has been used in this course before. Avoids payment in an established permissions market.

NOTE: Courts have ruled that this factor cannot convert an otherwise fair use to an infringing use. If, after evaluation of the first 3 factors, the proposed use is favorable to fair use the analysis ends and the use is fair. On the other hand, if the proposed use is tipping toward infringement, this factor should be considered.

This chart is adapted from The Copyright Crash Course © 2001 Georgia Harper at the University of Texas

Additional resources on fair use:

[University of Texas Rules of Thumb](#) – UT System’s fair use guidelines for using copyrighted works in coursepacks, distance learning, image archives, multimedia works, music, research copies and reserves

[Visual Resources Association Intellectual Property Rights Committee](#) – includes image collection guidelines and a “copy photography computer” to help determine the rights in a particular image

[Music Library Association Copyright for Music Librarians](#) – includes MLA’s guidelines on fair use, including reserve digital audio files

6. How do I get permission to use the work?

If your proposed use of a copyrighted work does not fall within any of the categories described earlier, you must obtain permission to use the copyrighted materials. Permission must be obtained from the copyright holder or the holder’s agent.

Obtaining permission can take time. Submit requests as early as possible so that if your request is denied or the license fee is too high, you will have time to choose other materials or limit the use so that it qualifies for fair use.

Sample Permission Request Forms:

[Association of American Publishers](#)
[National Association of College Stores](#)
[University of Texas System](#)
[Wake Forest University](#).

Textual Material

The copyright holder of a text is typically the author or publisher of the work. If you want permission to use a journal article or an excerpt from a book, a good place to begin is by contacting the [Copyright Clearance Center](#). CCC is the largest licensor of text reproduction rights in the world. It grants licenses for the reproduction and distribution of copyrighted materials in print and electronic formats throughout the world, including for classroom use, course packs (hard copy and electronic), reserves and distance learning.

If CCC doesn't handle the material for which you are seeking permission, or if you think you may be able to negotiate a better deal through a direct contact, you should contact the copyright holder. You can typically find the name of the copyright holder on the page with the copyright notice. The following resources should help you in finding and contacting the correct copyright holder:

[The American Association of Publishers](#) maintains contact information for the permissions departments of its members.

[The Authors Registry](#) handles copyright permissions and royalties for many freelance writers, writers' organizations and literary agencies.

[Publication Rights Clearinghouse](#) represents the National Writers Union to collect royalties for freelance writers.

[The WATCH File](#) (Writers, Artists, and Their Copyright Holders) is a database containing primarily the names and addresses of copyright holders or contact persons for authors and artists whose archives are housed, in whole or in part, in libraries and archives in North America and the United Kingdom. WATCH is a joint project of the Harry Ransom Humanities Research Center at The University of Texas at Austin and the University of Reading Library, Reading, England.

Other Copyrightable Works

Some resources for seeking permission to use other types of copyrighted works are:

Comics & Cartoons: [Cartoonbank.com](#) (from *The New Yorker* magazine)
[CartoonStock](#)
[Creators.com](#)
[King Features Syndicate](#)
[Tribune Media Syndicate \(tribunecontentagency.com\)](#)
[United Media \(comiczone.com\)](#)
[Universal Press Syndicate](#)
[The Washington Post Writers Group](#)

Film and TV: Contact the movie studio or television station.

[MGM Clip & Still Licensing](#). The FAQs on this site give a good description of the permissions that may be required in addition to that of the studio (e.g., actor, director, writer, stunt person, etc.)

[Sony Pictures Entertainment Film Clip & Still Licensing](#). Handles licensing of materials (feature film clips, stills, posters, dialogue, etc.) owned or controlled by Sony Pictures

Entertainment or its companies Columbia Pictures, TriStar Pictures, Screen Gems, Sony Pictures Classics and Columbia TriStar Home Entertainment.

20th Century-Fox Clip Licensing Department: (310) 369-3605.

[Universal Studios Media Licensing](#)

[Warner Bros Clip & Still Licensing Department](#). Handles licensing of materials from Warner Bros. Entertainment Inc., Turner Entertainment Co., Castle Rock Entertainment, and Hanna Barbera Feature, Television and animation libraries

Image Libraries:

[British Film Institute](#)

[Corbis Digital Pictures](#)

[Getty Images](#)

[The Motion Picture and Television Photo Archive](#)

Music:

[to be supplied]

Theatrical Rights:

Rachel Durkin, Manager of the Performing Arts Center at the University of Texas, Austin, has written a helpful article on [Obtaining Rights to Perform a Play or Musical](#).

The major play/musical publishing houses are:

[Baker's Plays](#)

[Dramatists Play Services, Inc.](#)

[Rodgers & Hammerstein Organization](#)

[Samuel French, Inc.](#)

[Tams-Witmark Music Library](#)

Visual Art:

[Artists Rights Society](#) represents the intellectual property rights interests of over 30,000 visual artists and estates of visual artists from around the world (painters, sculptors, photographers, architects and others).

[Visual Artists and Galleries Association, Inc. \(VAGA\)](#) is an artists' rights organization and copyright collective representing reproduction rights for approximately 500 American artists and, through agreements with affiliated organizations in other countries, thousands of foreign artists worldwide.