Copyright is ingrained in daily campus life, and it is critical that all Stanford faculty, students and staff have a working understanding of copyright law and its impacts. To ensure that all members of the Stanford community have that critical knowledge, The Stanford University Libraries provide this Copyright Reminder, which highlights common campus copyright concerns, and outlines the fundamental elements of US copyright law that apply in those situations.

This copyright reminder is distributed annually, but is always available on the libraries’ website. The 2013 edition has been dramatically redesigned, not only to align with the libraries’ new website, but also to bring in new content, including case studies that highlight common copyright issues on campus. We strongly encourage you to read through this document each year, to refresh your memory, and perhaps notice something that you missed in past years.

• Download the PDF to read the full document.

Key issues of the past year include:
• Dissertations are public disclosures for purposes of patent filings (see Highlights: Dissertations)
• An explosion of online courses, or Massive Open Online Courses (MOOCs) (see Highlights: MOOCs)

Copyright issues can be complex, and this document will certainly not answer every question. Members of the Stanford community who need further copyright information should feel free to contact Lauren Schoenthaler in the General Counsel’s office at lks@stanford.edu.

Key Links:
• Stanford’s Copyright & Fair Use resource page: fairuse.stanford.edu
• Stanford’s Patent and Copyright Agreements: http://rph.stanford.edu/Chpt5.html

Further Assistance:
• Please contact Lauren Schoenthaler in the Office of the General Counsel
Highlights for 2013
This section calls out issues that have been of particular concern or areas where recommended practices have been revised since the last Copyright Reminder.

Dissertations
Faculty need to be aware that the Office of Technology Licensing has determined that publication of a dissertation qualifies as a public disclosure per article 35 U.S.C. 102 of the United States Patent and Trademark Office (i.e., for purposes of patent filings). This is true for both print and electronic dissertations, and is true even when the dissertation is embargoed so that access is limited to the Stanford community. It is critical that faculty and doctoral candidates work together well in advance of the candidate’s dissertation filing to ensure that timing concerns regarding publication of data are resolved.

Similarly, faculty and doctoral candidates need to coordinate to ensure publication of the dissertation does not conflict with other publication agreements related to material included in the dissertation.

MOOCs
Massive Open Online Courses (MOOCs), distributed through systems like Class2Go, Coursera or Venture Lab, became quite popular in 2012. Faculty or staff interested in offering a public online course should register their interest at http://bit.ly/StanfordFacOnlineCourse at least two months in advance of a potential launch date. Normally, public courses will be launched once per quarter, subject to various considerations. Faculty developing online courses will be asked to sign a Course Development Agreement (CDA) and should allow enough lead time to work out copyright, accessibility, and other issues. Faculty creating MOOCs need to pay special attention to copyright concerns, as the issues can be complex, and rights that you might have obtained to post material on CourseWork or other local course management systems do not apply in these larger systems. Similarly, the face-to-face teaching exemptions that allow you to use material in your classroom do not apply. The Office of General Counsel has put together Online Course Copyright & Privacy Guidelines, which are available on this site. (see Stanford Online Course Guidelines).
Common Situations
This section looks at common campus situations where copyright issues must be considered. If you don’t find a case study that quite matches your personal situation, please feel free to contact Lauren Schoenthaler in the General Counsel’s office at lks@stanford.edu.

Dissertations
Faculty need to be aware that the Office of Technology Licensing has determined that publication of a dissertation qualifies as a public disclosure for purposes of patent filings. This is true for both print and electronic dissertations, and is true even when the dissertation is embargoed so that access is limited to the Stanford community. It is critical that faculty and doctoral candidates work together well in advance of the candidate’s dissertation filing to ensure that timing concerns regarding publication of data are resolved.

Students, similarly, need to be aware that their dissertation is a publication, and they need to work with their advisors to ensure that they manage embargos appropriately so as not to inappropriately republish material, or publish material that is intended for later publication.

More information on dissertation copyright issues are outlined in this presentation that all dissertation candidates are required to review:

http://sulair.stanford.edu/about_sulair/special_projects/stanford_etd_project_copyright_info.html

Online Course Readers
Loading reading material into CourseWork or any other course management system is equivalent to creating a printed course reader. Where the material you are interested in is available electronically from a legitimate source, either through a library database or the publisher’s website, for example, the most cost-effective approach is to provide links to the material, rather than load a copy of the file into the course management tool. Linking is not copying, and thus you won’t be required to pay licensing fees for copies.

Prior to digitizing copyrighted materials, faculty should review Stanford Libraries’ electronic holdings to determine if a pre-existing license for the content exists. Stanford Libraries has secured licenses to tens of thousands of online works, and many others are publicly available (e.g., through Creative Commons licenses). Additionally, there are a number excellent digitization projects, such as Google Books, the Internet Archive, had HathiTrust that are making public domain content available online.
If you must load a copyrighted document into the system, in PDF or some other format, you’ll need to pay appropriate licensing fees for distribution of the material to your students. Stanford does not currently have an automated method to pay those fees, so you’ll need to reach out to the Copyright Clearance Center or directly to the publisher to pay. The libraries are currently investigating tools to automate this process for materials that are not available through the libraries subscribed databases.

A recent presentation to Law School staff covers a variety of issues related to creating online course readers: [http://www.youtube.com/watch?v=5F1rpN2SUyg](http://www.youtube.com/watch?v=5F1rpN2SUyg)

**Social Media & Web Tools in Teaching**

Some courses can be enhanced by websites and collaboration tools. Preferably, these tools should be hosted by Stanford to reduce concerns regarding content ownership, the confidentiality of student information, and web security.

Third-party tools and websites may be appropriate if no comparable Stanford tool exists. But be aware that many service providers require individual users to sign up for an account and agree to terms of use in exchange for use of the services. Faculty should review terms of use and pay attention to:

- Content ownership concerns (e.g., are students required to give away or license their copyright interests in student-generated content to the service?)
- Privacy concerns (e.g., can students control the distribution of their own student-generated content?)
- Use of the content for non-Stanford purposes (e.g., will the service provider keep a copy of the student-generated content for data-mining or other non-Stanford related purposes?)

Faculty should notify students in the syllabus when third-party tools will be used in a course, and should alert students to the terms of use. Faculty should also work with students who are not comfortable signing on to particular third-party terms of use—including, where possible, enabling a student to participate in the course without relying on the third-party tools. For more information, see this FAQ on Stanford’s Secure Computing page: [http://www.stanford.edu/group/security/securecomputing/restricted_data_handling_faq.html#Q7](http://www.stanford.edu/group/security/securecomputing/restricted_data_handling_faq.html#Q7)

**Recording Courses**

**Faculty**

Before recording and broadcasting a Stanford course (for example, for inclusion in iTunesU), faculty must consider a number of issues, including intellectual property and privacy issues, and Stanford copyright and videotaping policies. Certain classes
may not be appropriate for public consumption. A few example include classes which:

- Rely on substantial in-class use and display of third-party copyrighted content
- Involve discussion of identifiable patients or research subjects
- Require substantial participation by students who may be made uncomfortable by the idea that their thoughts will be broadcast to the world

Students must have advance notice that a course will be recorded and broadcast; an area of the classroom should be set aside for students who wish to remain off-camera. Faculty should also be available to answer student questions off-camera (e.g., during office hours). There are several groups with which faculty may work to determine whether it makes sense broadcast a particular course or lecture, including Stanford’s Vice-Provost for Online Learning, John Mitchell, and Lauren Schoenthaler in the legal office.

Faculty or staff interested in offering a public online course should register their interest at http://bit.ly/StanfordFacOnlineCourse at least two months in advance of a potential launch date. Normally, public courses will be launched once per quarter, subject to various considerations. Faculty developing online courses will be asked to sign a Course Development Agreement (CDA) and should allow enough lead time to work out copyright, accessibility, and other issues. Faculty creating MOOCs need to pay special attention to copyright concerns, as rights that you might have obtained to post material on CourseWork do not apply in these larger systems. Similarly, the face-to-face teaching exemptions that allow you to use material in your classroom do not apply. The Office of General Counsel has put together Online Course Copyright & Privacy Guidelines. (see Stanford Online Course Guidelines).

Students
Students may not audio or video record lectures or classes without permission from the faculty leading the course (and guest speakers, when applicable). When permission is granted, students may keep recordings only for personal use and may not post recordings on the Internet, or otherwise distribute them. Students who need lectures recorded for disability-related reasons should contact the Office of Accessible Education.

Classroom Use of Media
The Conference on Fair Use established the following guidelines for in-class presentations:

“Educators may incorporate portions of lawfully acquired copyrighted works when producing their own educational multimedia programs.”
• No more than 10% or 3 minutes (whichever is less) of motion-based works;
• No more than 10% or 30 seconds (whichever is less) of a song or video;
• No more than 10% of a text; and
• Entire photographs or illustrations may be used provided that no more than 10% or 15 images (whichever is less) comes from any one source.

For in-class presentations that will not be posted on the public Internet, these guidelines are recommendations and are not set in stone. But the guidelines do not apply to any presentation that is to be posted onto the Internet or sold commercially. Posting to the Internet even a single copyrighted image within a presentation, such as a political cartoon, may not be a fair use. For publicly displayed content, refer to the Online Course Copyright & Privacy Guidelines.

Print Reserves
The Stanford Libraries limit the number of photocopies of copyrighted materials that can be placed on course reserves without permission from the copyright holder. For specific information about reserve operations in campus libraries, contact the library where you intend to place the reserves. Note that filling course reserve requirements may take two to three months before the quarter begins if the library does not have a copy of the publication and copyright permission is needed.

Publishing
When publishing, faculty and students need to pay special attention to the rights they have in their publications, and the rights they are signing over to the publisher. Granting agencies, notably the NIH, may have requirements on when and how publications related to grant-funded research must be made available, and these requirements may limit the publication agreements you can sign. Faculty need to be thoughtful about how they wish to reuse their research in classrooms and with colleagues, and ensure that, in working with publishers, they retain the rights they need to enable that collaboration.

The rise of the Open Access movement, which aims to make research available online--free of charge, and free of most copyright and licensing restrictions--has resulted in authors of scholarly works having a much wider array of licensing options than they have in the past. For some authors or publishers, the traditional approach of assigning copyright in an article or book to a publisher may be appropriate. Other options include:

• Granting the publisher a license to publish your work, while you retain copyright
• Publishing in open access journals
• Assigning copyright to a journal, with a license back from the journal to the author enabling the author to do one or more of the following:
Stanford generally doesn’t mandate a copyright position for its community members who publish articles or books, although the School of Education has an Open Access Initiative: http://ed.stanford.edu/faculty-research/open-archive/oapolicy.

More detailed information on rights issues, and recommendations for working with publishers, can be found here:

- The Author’s Rights Addendum: http://www.arl.org/sparc/author/addendum.shtml
- Create Change: http://createchange.org/

Special Note Regarding Research Supported by NIH
In 2008, the National Institutes of Health (NIH) implemented a Public Access Policy, which requires that a digital copy of all research publications supported by NIH funding be submitted to PubMed Central, an online public repository, within 12 months of the original publication. The NIH website offers more information about this policy: http://publicaccess.nih.gov/

Peer-to-Peer File-Sharing
Peer-to-peer (P2P) file-sharing allows individual users of the internet to directly exchange files with each other. While the technology has many useful applications, unauthorized downloading and sharing of copyrighted works is problematic, and may result in harsh civil and criminal liabilities in addition to university sanctions. Fines of up to $150,000 in civil statutory damages may apply for each separate willful infringement, regardless of the actual damages involved. Stanford may also take administrative action against copyright infringement, including loss of networking privileges and SUNet ID, or disciplinary action up to and including termination for faculty and staff, and expulsion for students.

Copyright owners can, and do, lawfully scan Internet traffic to identify instances where their material is being shared over P2P networks. When they discover a problem, they can send a complaint to Stanford under the Digital Millennium Copyright Act, or file a "John Doe" lawsuit against the IP address. In the latter case, Stanford would have to provide the identity of the Stanford network user.

Copyright damages are usually statutory – that is, determined not by actual damages but by statute. The minimum damages amount for unintentional infringement is
$200 per copyright violation (e.g., file sharing one song or one movie) and willful violations can result in penalties of up to $150,000 per violation. 17 U.S.C. § 504. File-sharing can also result in criminal prosecutions and sentences of up to 10 years in prison. 17 U.S.C. § 506; 18 U.S.C. § 2319. Every year since 2003, copyright owners have brought claims against individual Stanford students and staff members who have engaged in unlawful file-sharing.


**Stanford’s Copyright Complaint Policy for Students:** Stanford has created a “Three Strikes” policy for dealing with unresolved file-sharing complaints. More information about Stanford’s student policy can be found at Stanford’s Copyright Complaint Resolution Center website, http://resolution.stanford.edu/ Students may be referred to Judicial Affairs for unlawfully file-sharing and discipline can be imposed up to an including expulsion.

**Stanford’s Copyright Complaint Policy for Faculty and Staff:** When staff receive a first or second complaint, the matter is referred to a supervisor and to HR. Discipline up to and including termination may be imposed. If a faculty member at Stanford receives more than one complaint, the matter is referred to a Department Chair. Upon receipt of a third complaint, Stanford terminates Internet connectivity, including disabling the SUNet ID, and the matter is referred on for discipline: Faculty are referred to the Provost; and staff are referred to HR and can expect to be terminated.

**Technological Deterrents.** To combat unlawful file-sharing, Stanford uses Traffic Advisory Notices, which are sent to the top band-width users at Stanford on a rolling periodic basis. The Advisory provides information to the recipient about unlawful file-sharing and the consequences of unlawful file-sharing. A copy of the advisory is here, https://ogc.stanford.edu/sites/default/files/p2p_traffic_advisory_0.pdf

**Free & Legal Entertainment on the Internet!** There are multiple options to access free and legal music, TV and movies. The MPAA has an entire page listing many legal resources to access television and movies from your computer, including a listing to all major networks (which generally post new shows a day after original airing). See http://www.mpaa.org/contentprotection/get-movies-tv-shows.

In particular, we recommend:

- **Hulu:** http://www.hulu.com/
  provides access to recent TV shows and movies on a model supported by limited advertising.
• Pandora Free Internet Radio: http://www.pandora.com/#/
  provides targeted music selections based on artist or song preferences of the individual listener.
Recommended Practices

This section outlines best practices you are urged to adopt where dealing with copyrighted material.

Link To It

Linking is not copying! It is generally acceptable to point others to material posted on the Internet by providing a link to the website. The link itself is not a copy of the content--it is merely a direction to content. Because the link provider is not making copies, linking is generally outside the boundaries of copyright law. The exception is that it could be contributory infringement to provide a link to a website knowingly hosting copyrighted material unlawfully. So, link to publishing sources directly, such as journals or newspapers.

In most cases, you can provide direct links to licensed material such as journal articles to others who have access to material under the same license. This is particularly useful in CourseWork and other course management systems, where most participants in the class will have access to the full suite of material licensed by the library. Faculty can provide links to readings, and won’t have to worry about the license fees that would be required if those readings were uploaded to the system.

Understand What Copyrights You Hold

The University's copyright policy establishes that all rights in copyright, regardless of their form of expression, remain with the creator, except in specified cases where law or University policy require otherwise. See Stanford University Research Policy Handbook Section 5.2 which states:

“Copyright is the ownership and control of the intellectual property in original works of authorship which are subject to copyright law. It is the policy of the University that all rights in copyright shall remain with the creator unless the work is a work-for-hire (and copyright vests in the University under copyright law), is supported by a direct allocation of funds through the University for the pursuit of a specific project, is commissioned by the University, makes significant use of University resources or personnel, or is otherwise subject to contractual obligations.”

You can review the entire policy here: [http://rph.stanford.edu/5-2.html](http://rph.stanford.edu/5-2.html)

Request Permission Where Needed

If an exception such as fair use or face-to-face is not clearly available, you must get permission to use a copyrighted work from the owner of the copyright holder. A request to use copyrighted material usually can be sent to the permission...
department of the work's publisher. Allow four to six weeks for a request to be processed. Permission requests should contain:

- Title, author and/or editor, and edition
- Exact material to be used
- Number of copies you plan to make
- Intended use of the material (e.g., educational)
- Form of distribution (e.g., hard copy to classroom, posted on Internet with password protection)
- Whether material will be sold (e.g., as part of a course reader)

In addition, the CCC can give you permission to use many materials for a fee. Contact CCC at www.copyright.com or (978) 750-8400 to see if the materials you wish to use can be licensed.

**Exercise Caution When Downloading and Uploading**

Be mindful of copyright when downloading material from the Internet. Just because a work is posted on the Internet does not mean that the owner of the copyright in it has given you permission to make copies or distribute the work to others. Note, too, that material may have been placed on the Internet without the author’s permission. Fair use principles (see below) may apply, but you need to go through a fair use assessment to decide that.

Similar concerns apply when uploading material to the Internet. It might be perfectly acceptable under the fair use doctrine to include graphs from various articles in a paper written for class; it is probably not a fair use, however, to publish those graphs to the world by posting the same paper on the Internet.
Stanford Online Course Guidelines

These guidelines provide specific guidance for faculty and staff preparing materials that will be distributed online beyond the Stanford community. Typically, this distribution involves Massive Open Online Courses (MOOCs), distributed through systems like Class2Go, Coursera or Venture Lab, though these guidelines apply in any similar situation. There are three areas of concern.

Copyright

For live classroom teaching, faculty members generally create course content relying on the face-to-face teaching exception of copyright law. For online public distribution of course content, the primary and limited tool to use third-party copyrighted material without permission is the fair use doctrine of copyright law. To avoid copyright concerns, we ask Stanford faculty creating open online courses to follow these guidelines with regard to use of third-party content in materials. Third party content means any content that is not self-created, such as graphs, charts, artwork, photos, screenshots, clip art, trademarks, videos and music.

Each course goes through a copyright clearance process prior to being released. Faculty need to provide a marked set of slides for the entire course indicating the source of each image and whether the image is 1) in the public domain; 2) in copyright and used with permission (through direct permission or a license); or 3) in copyright and used under the fair use doctrine.

We have prioritized the following options for the use of images and videos in presentations:

**Option A:** Make the content yourself. Rather than relying on an existing graph or chart, make an image yourself or use a photo that you have taken. It is acceptable to pull facts from copyrighted material. For example, while a bar graph showing silhouettes of the world’s tallest buildings is subject to copyright protection, the heights, dates of construction and location of the buildings are not subject to copyright protection. (Note: Do not copy someone else’s chart, as that is simply making a derivative work and the copyright stays with the original author.)

**Option B:** Get the content from a colleague or friend, and get permission to use it in your course. Make sure the colleague understands the scope of use you will be making of the image and make sure that your friend owns copyright (has not given it away to a journal or conference) and has the authority to give you the permission you need.

**Option C:** Get the content from a website offering public domain, Creative Commons1 or similarly licensed materials, and make sure that the images selected

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1 For more information about Creative Commons licenses, see [http://creativecommons.org/](http://creativecommons.org/)
may be used for the intended purpose, generally including for-profit purposes. 2. An example of an acceptable license is CC-CY, Creative Commons Attribution License (in which you must provide attribution to the author). 3

- Creative Commons Sourced Material, http://search.creativecommons.org/, will get you to a series of sources for Creative Commons images, including Flickr and Google.
- Public domain images.com http://www.public-domain-image.com/

Option D: Link to it! Pointing students to the source of content on the web is lawful. The only limitation here is that you should ensure that you are pointing to a legitimate source for the content. That is, the original website or poster of the content (in the case of YouTube, for example) must have or reasonably be expected to have the authority to host or post the content. Provide a soft link (that is, make it clear that the students are leaving the course website and going to another website), so that the students view the content from the original source; do not deep embed the content (that is, hide the source of the hosting website).

Option E: Conduct a fair use analysis. In the context of open-access online education, fair use is somewhat limited. Faculty may safely rely on fair use in two circumstances. 1) The image shown is being directly criticized. For example, in a photography course, a photo is being shown to illustrate the problems with over-exposing film. 2) The image is being used in a transformative way; that is, the purpose for use in the course is completely different than its original purpose. For example, in a course about web design it is acceptable to use limited portions of copyrighted materials that directly impact the educational goal sought. In particular, limited images that demonstrate or illustrate the educational concept at issue could be found to be fair use when used sparingly and appropriately. For example, it would likely be a fair use to show a picture of a plant cell dividing in a discussion on that topic. Stay away from cumulative examples. Favor public domain images (of the cell dividing, for example) over copyrighted images.

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2 Many online courses are non-profit in nature, and accordingly a license permitting use for non-profit purposes is sufficient permission to use the image in the non-profit online course. Stanford recommends getting broader for-profit licenses to anticipate future uses of the courses. It is very common that material developed for one purpose today will be re-purposed in the future. Getting broad licenses ensures the future usability of the developed content.

3 Please contact Lauren Schoenthaler at lks@stanford.edu or Jane Manning at jmanning@cs.stanford.edu with recommendations for other valuable sources of images that should be added to this document.
Option F: Seek clearance from the publisher for use. Generally, you can go to the website of the publisher and find a link for copyright or “contact us.”

Option G: Pay for a license. Many images can be licensed for a fee. (Some people find the certainty and speed of this method preferable to contacting the publisher for permission.)


Option H: Blank it out. If you are not able to make one of the options above work, then take the image out. Stanford will provide tools to blank out images.

DO NOT
Do not use copyrighted material unless it is necessary to achieve the educational goals you are seeking for your students. Do not use cumulative materials (for example, use one image of a plant cell in prophase, not three). Unless you have permission, do not include copyrighted material for the sake of entertainment (a cartoon, a picture of a puppy to introduce the concept of puppy love, a climber at the top of a mountain to illustrate how far we’ve come).

In addition to the above information, unless you are offering direct criticism or commentary, stay away from the following material:

- Cartoons
- Getty Images
- Popular movies, television shows, songs
- Trademarks

For more information about the use of materials in online education, we recommend the guidelines put together by the Center for Social Media. http://www.centerforsocialmedia.org/ocw

Privacy
In addition to copyright concerns, faculty should not include private or confidential material in presentations.* Private information includes:

- personally identifiable health or patient information*
- identifiable images/photographs of non-public figures (general crowd shots are acceptable)*
- identifiable voices*
- educational records that identify individual students (or sufficient information from which a particular student can be identified)*
- Social Security numbers
- Driver’s Licenses or any form of government IDs
- Individual financial records, such as tax forms, financial statements or credit card numbers
* Permissible to use with the express written permission of the individual whose private information is being released.

**A note about filming live Stanford courses for online course distribution:**
Developing online courses from live Stanford-instructed courses requires the express written permission of the faculty member’s cognizant dean. In-class students must be given advance notice of the intent to record and distribute the course. In-class students must be provided with the option of sitting in an area where they will remain entirely off-camera. At the conclusion of each recorded session, the instructor or speaker must remain available to answer any question of any in-class student not comfortable asking the question during the recording.

If a course is offered to both students enrolled at Stanford and the public, the instructor must provide separate discussion forums so that the privacy of the Stanford students is protected. If the Stanford students wish to participate in the public forum, they may enroll separately in the public course.

**Accommodations**
Prior to the launch of courses, the University requires that the course materials be prepared in a manner consistent with the following guidelines for accessibility.

The University or its platform partner will make captioning available to participants in real time at the time of release of each video. Instructors must provide video captions in sufficient time so the captions are available when videos go live. Instructors must also manage student requests relating to the captions.

For courses with slide-based lecture content, the University and its teaching staff will upload slides at the same time the video is uploaded.

The text descriptions of all visual/graphical images in assessment materials created by the instructor (such as quizzes, exams and problem sets) will be prepared proactively by the teaching staff and will be made available in real time at the time of the release of each video or quiz or exam.

As to other visual/graphical images in the videos or other types of accommodation requests, upon a request from a participant, the University and its platform partner will enter into an interactive process in good faith with the requesting party to determine the nature and scope of an appropriate accommodation. The instructor may need to create additional textual descriptions of the visual/graphical content in response to such a request.

Should the need for accommodations cause delays for participants who have disabilities, appropriate extensions on deadlines will be given. Extensions to deadlines will be given to participants with learning disabilities as needed.
For questions regarding these guidelines, please contact Jane Manning at jmanning@cs.stanford.edu.
Copyright Law Overview
This section outlines areas of US copyright law most relevant to the Stanford community.

Stanford’s Copyright & Fair Use site (http://fairuse.stanford.edu) includes a more detailed, though still abbreviated, overview of US copyright law, for those seeking more information. See http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/

Where Copyright Applies
The Copyright Act (Title 17 of the US Code) gives authors or creators of original works the exclusive right to:
- copy the work;
- distribute the work;
- display or perform the work publicly; and
- create derivative works from the original work.
Copyright applies to any work that is “fixed in any tangible medium of expression”, including books, of course, but also photographs, drawings, music, architecture, drama, sculpture, web pages software, and multimedia works. No copyright mark or registration is required for copyright to apply, so almost all modern works are under copyright. That means that you can't copy, distribute, display, or create derivative works from them without the explicit permission of the copyright holder.

Penalties for Misuse
Penalties for copyright infringement can be harsh. Fines of up to $150,000 in civil statutory damages may apply for each separate willful infringement, regardless of the actual damages involved. Stanford may also take administrative action against copyright infringement, including loss of networking privileges and SUNet ID, or disciplinary action up to and including termination for faculty and staff, and expulsion for students.

Copyright Term
Copyright is not permanent, and works do eventually enter the public domain, where can be reused freely, without any permission. However, copyright term is often longer than expected, and changes in copyright law over time mean the length of copyright term may vary with the age of the work.

Broadly speaking, works first published in the US before 1923 are in the public domain. Also, US government works (though not state or local government works) never have copyright protection, and enter the public domain on publication. Beyond those two categories, it can be challenging to determine the copyright status of a US work, and it is generally not safe to assume a work is in the public domain.
By international treaty, we must respect the full copyright term of works in their home countries, and many countries have copyright terms that run for the life of the author plus 50 or 70 years. Therefore, without researching the specific title, it is generally not safe to assume that an international work is in the public domain until it is at least 150 years old.

Exceptions
While copyright holders rights are exclusive, there are some exceptions built in to copyright law that allow works to be used without permission of the copyright holder in very specific conditions. The five major exceptions that are used in the academic environment are:

- **Fair Use** (Section 109 of Title 17)
- **First Sale** (also Section 109 of Title 17)
- **Face-to-Face Teaching** (Section 110 of Title 17)
- **Distance Learning** (TEACH Act), and
- **Library & Archives Exceptions** (Section 108 of Title 17)

The specific situations in which each of these exceptions applies are outlined below. For works in copyright, unless one of these exceptions applies to your situation, you need permission to copy, distribute, or display the work. Note that there is no general exception for educational use.

**Fair Use**
Fair Use allows limited use of copyrighted materials for educational and research purposes. The statute outlines four factors that should be assessed in determining whether a use is a Fair Use. These are:

- the purpose and character of your use
- the nature of the copyrighted work
- the amount and substantiality of the portion taken, and
- the effect of the use upon the potential market.

The test is, intentionally, fact dependent, so you need to look at each use individually to determine if it is a Fair Use.

Stanford’s [Copyright & Fair Use](http://fairuse.stanford.edu) site provides much more detail on Fair Use, its application, and relevant case law.

**First Sale**
The owner of a lawfully obtained copy of a copyrighted work may dispose of that copy (lend, rent, sell, give-away, or throw away) without permission of the copyright owner. Under the first-sale doctrine, a faculty member could lend out his copy of a book or a DVD to students in his class. This exception does not apply to
recorded music, and many software licenses prohibit the use of the first-sale doctrine.

**Face-to-Face Teaching**
This exemption allows instructors to perform or display copyrighted materials during face-to-face teaching activities. For example, it is permissible to show a full-length motion picture in class as part of the classroom learning. Note, however, that this exemption does not permit copying or distributing a work -- only displaying or performing it during class time. Also, as the title implies, this exemption applies only to in-person presentations. It does not apply to distance learning or virtual classrooms.

**Distance Learning**
The TEACH Act extends the Face-to-Face Teaching exemption to distance learning courses in a limited way. The exemption is narrow, and it is rarely applicable at Stanford, as Stanford has very few mediated distance online courses. Note that this exemption does not apply to iTunes U or to MOOCs (eg Course2Go, Coursera); faculty will need to rely on the fair use exemption for such courses, or pay for distribution rights.

When the TEACH Act does apply, it allows the instructor to transmit performances of entire non-dramatic works and reasonable and limited portions of any other audiovisual work without obtaining permission. For the Act to apply, the performance or display must be:

1) A regular part of mediated instructional activity;
2) Made by, at the direction of, or under the supervision of the instructor; and
3) Directly related and of material assistance to the content of the course.

Further, the following technological restraints must be in effect:

1) The content must be accessible only to those students who are enrolled in the course;
2) The content must be accessible only for the duration of a class session;
3) To the extent technologically possible, the content must be protected from further distribution ("downstream-controlled"); and
4) To the extent technologically possible, the content must not be subject to retention by students
5) All material displayed must contain the following notice:
   The materials on this course website are only for the use of students enrolled in this course for purposes associated with this course and may not be retained or further disseminated. The materials on this course website may be protected by copyright; any further use of this material may be in violation of federal copyright law.
Georgia Harper at the University of Texas has produced an excellent checklist to help you determine if your use qualifies under the TEACH Act. It is online here: [http://copyright.lib.utexas.edu/teachact.html#checklist](http://copyright.lib.utexas.edu/teachact.html#checklist)

**Library & Archive Exceptions**
Section 108 of the Copyright Act permits libraries and archives to make certain uses of copyrighted materials in order to serve the public and ensure the availability of works over time. Among other things, Section 108 provides limited exceptions for libraries and archives to make copies in specified instances for preservation, replacement and patron access. These exceptions will generally not apply to faculty, students, or staff outside of the library. For more information on Section 108, see [http://www.section108.gov/](http://www.section108.gov/)

**DMCA & Access Control**
The Digital Millennium Copyright Act (DMCA) prohibits the circumvention of technological measures that control access to copyrighted works (i.e., digital rights management technologies). Until recently, that prohibition even prevented circumventing such measures to access only a small portion that would be justified under the Fair Use Doctrine (e.g., a clip of a film). In 2010 and 2012, the Librarian of Congress has recognized that circumvention to access small portions for educational or accessibility uses by college and university professors and students is acceptable, and will no longer be subject to the prohibition.