



# 2016 Copyright Reminder

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*Copyright and intellectual property issues are a part of the fabric of research and scholarly communications, and thus all Stanford faculty, students and staff need a working understanding of copyright law as it impacts their daily lives. The Copyright Reminder, which highlights common campus copyright concerns and outlines fundamental elements of US copyright law, is distributed annually to ensure that the Stanford community remains aware of those issues.*

This copyright reminder is distributed annually, but is always available on the Stanford University Libraries' website. 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.

Notable topics in copyright and IP for 2016 include:

- Protection of Stanford Course Material
- Creator's Guide to Copyrighting Commercial Work
- Data Management Plans & Data Sets

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](mailto:lks@stanford.edu).

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Key Links:

- Stanford's Copyright & Fair Use Resource Page: <http://fairuse.stanford.edu>
- Stanford's Research Policy Handbook on Intellectual Property: <http://doresearch.stanford.edu/policies/research-policy-handbook/intellectual-property>
- Stanford Office of the General Counsel FAQ on Intellectual Property: <https://ogc.stanford.edu/university-faqs/intellectual-property>
- IP Considerations for Dissertation Authors: [http://stanford.edu/group/univ-librarian/2015\\_Copyright\\_for\\_Dissertations.pdf](http://stanford.edu/group/univ-librarian/2015_Copyright_for_Dissertations.pdf)
- Office of Technology Licensing Intellectual Property Pages: [http://otl.stanford.edu/inventors/inventors\\_ip.html](http://otl.stanford.edu/inventors/inventors_ip.html)

Further Assistance:

- Please contact Lauren Schoenthaler in the Office of the General Counsel at [lks@stanford.edu](mailto:lks@stanford.edu).



## Key Issues for 2016

This section calls out issues that have been of particular concern or areas where recommended practices have been revised since the last Copyright Reminder.

### Protection of Stanford Course Material

Recently, third party websites have posted Stanford course content without permission. Faculty and TAs are advised to place (c) [copyright symbol] Stanford University 201\_ on all course assignments, syllabi, exams and other materials developed for a course. Students are reminded that the University owns the course content and enrolled students have a license to use the material for class. Students may not distribute the content to others without the permission of the course instructor.

### Creator's Guide to Copyrighting Commercial Work

Stanford's Office of Technology Licensing is responsible for managing the intellectual property assets of the University. While they are known for their licensing work related to patents, they also support students and faculty in commercializing copyrighted material where it is appropriate. In 2015, they published a guide to assist creators in understanding the commercialization and distribution issues they will face in this effort. <https://otl.stanford.edu/documents/OTLCopyrightGuide.pdf>

### Data Management Plans & Data Sets

Funding agencies are emphasizing and expanding their requirements for the inclusion of data management plans as part of grant proposals, and grants may be denied where researchers fail to provide for the long-term maintenance of their research data. Copyright concerns are one of the significant issues that researchers must address in developing these plans. The Stanford Libraries offers tools and support for creating data management plans (<http://library.stanford.edu/research/data-management-services/data-management-plans>), and can also assist with the in-licensing and sharing of data in ways that are compliant with data sharing mandates (see Data Sets, below).



## 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](mailto:lks@stanford.edu).

### Classroom Use of Material

The 1997 Conference on Fair Use established guidelines for educators incorporating portions of lawfully acquired copyrighted works into their own educational multimedia programs. While these are guidelines only, and not mandated by law, they provide a good starting point for assessing whether your use of media qualifies as Fair Use. The recommended guidelines are:

- 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) come from any one source.

Moreover, these guidelines apply to in-class presentations that will not be posted on the public Internet. They 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 [Stanford Public Online Course Guidelines](#).

In 2014, in the Georgia State litigation regarding the use of e-reserves and e-coursepacks, the appellate court found that all copyright guidelines are truly that – guidelines -- and do not substitute for an individualized analysis of the four factors of the fair use doctrine. In particular, the court found that use of the central aspect of a work, even if less than 10% might not qualify as fair use.

### Data Management Plans & Data Sets

Creating, receiving and sharing data, including access to large data sets, has become a key component of research at Stanford. This includes both the management of data and data sets created during the research process, and the acquisition and sharing of data sets for use in research.

#### Data Management

Funding agencies are emphasizing and expanding their requirements for the inclusion of data management plans as part of grant proposals, and grants may be denied where researchers fail to provide for the long-term maintenance of their research data. Copyright concerns are one of the significant issues that researchers must address in developing these plans. The Stanford Libraries offers tools and support for creating data management plans (<http://library.stanford.edu/research/data-management-services/data-management-plans>).



Under university policy, when researchers generate data in the course of their Stanford work, the data sets remain under their control but are owned by the University. Researchers who intend to commercially license out data sets created in the research process must coordinate with the Office of Technology Licensing (OTL) (<https://otl.stanford.edu>).

### Acquisition of Data Sets

Researchers must ensure that data sets they acquire for use in their research are appropriately licensed in to allow research results to be shared, and they must carefully monitor license terms of data sets they bring in to Stanford. Stanford Libraries provide data management services for all Stanford researchers (<https://library.stanford.edu/research/data-management-services>) and can also assist in the acquisition of data sets in ways that are compliant and allow reuse.

Other departments on campus that may participate in agreements for the acquisition, maintenance, and sharing of research data sets include:

- Office of Sponsored Research (OSR) – for data agreements with government or non-profit entities (<https://doresearch.stanford.edu/research-offices/office-sponsored-research-osr>)
- Industrial Contracts Office (ICO) – for data agreements with industry for research purposes (<https://ico.stanford.edu>)

### Dissertations

Students preparing dissertations face challenges related to both the use of third-party copyrighted material and to the use of material for which Stanford owns the copyright.

In regard to Stanford-produced information and data, it is critical that faculty and doctoral candidates coordinate closely to ensure that material published in the dissertation is appropriate for release. 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. Doctoral candidates must work with their advisors to ensure that they do not inappropriately republish material, or publish material that is intended for later publication, by another member of a project team or a research partner.

Authors must ensure that publication of the dissertation does not conflict with other publication agreements or copyright restrictions that may apply to material included in the dissertation. Candidates should carefully review publication agreements for previously published material that will be included in their dissertation to ensure that inclusion in the dissertation will not cause a conflict. Candidates will be responsible for obtaining permissions for all published and third-party material included in their dissertations.

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

[http://stanford.edu/group/univ-librarian/2015\\_Copyright\\_for\\_Dissertations.pdf](http://stanford.edu/group/univ-librarian/2015_Copyright_for_Dissertations.pdf)



## Managing Intellectual Property Across Teams

Questions about management of copyright in research and pedagogical output are common, particularly in situations where multiple Stanford workgroups participate in the project. Where you are collaborating with other individuals or another unit, it is important to determine in advance how rights to the output of the research project will be managed.

Stanford's [copyright policy](#) and Stanford's [Tangible Research Property](#) policy, which includes software, are important resources as you determine the direction your project will take.

Stanford's copyright policy defines who owns copyright at Stanford for Stanford related projects. The Dean of Research is authorized to make decisions regarding copyright ownership, including whether the work is owned by an individual author (or authors), by the university or under some combination of ownership. The Dean of Research will also arbitrate any disputes that arise within project teams.

In order to assist the Dean of Research, however, it is best to commit expectations of copyright ownership in writing. When cross-departmental teams undertake projects, it is best to have a discussion up front to clarify how copyright, patents, and other IP will be managed and which teams will retain and manage rights for all portions of the project. Be sure to consider not only publications arising from the project, but also data sets, software, websites, user interfaces, specifications, codebooks and other outputs. It is acceptable for faculty to hire graduate students, students or post-docs to provide research assistance without an expectation that these individuals will have an ownership interest in the final written output. It is, however, best for faculty to make that clear to researchers at the time of hire to avoid confusion. Similarly, in circumstances in which university funding is significant, the University likely has ownership interests and if this result is not the expected outcome, it is best to confer with the Dean of Research at the outset of a project.

## Online Course Readers

Loading reading material into Canvas or any other course management system is equivalent to creating a printed course reader, and in both cases the faculty member preparing the reading list is responsible for ensuring that permissions are obtained where needed for the reuse of published materials. Services that print and distribute hard-copy course readers generally take on that responsibility and pass costs on to students who are purchasing the reader. In online systems, faculty may have to take on that responsibility more directly. Recent litigation indicates that a faculty member may make some very limited amounts of electronic content available for students to review provided that the faculty member has done an individualized assessment of the work under the four factors of the fair use test.

A cost-effective approach for providing access to publications within a course management system is to provide links to the published 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 of excellent digitization projects, such as Google Books, the Internet Archive, and HathiTrust that are making public domain content available online. For content that is in copyright, faculty can make use of [SIPX](#) to assist in the management of permissions fees.

This presentation to Law School staff covers a variety of issues related to creating online course readers: <http://www.youtube.com/watch?v=5F1rpN2SUyg>.

### Public Online Learning

MOOCs and other online learning systems raise a variety of copyright and intellectual property concerns. Per University policy, and as noted in the Research Policy Handbook, “courses taught and courseware developed by faculty while employed by the University belong to Stanford,” thus faculty offering a public course require approval of their department chair and cognizant dean. In addition, content in these courses is subject to different copyright exemptions than face-to-face classes or even Stanford-specific online classes.

To ensure that these issues are addressed, the [Vice Provost for Teaching and Learning](#) (VPTL) coordinates Stanford’s public online course offerings. Faculty or staff interested in offering a public online course should register their interest at <http://stanford.io/vpolRegisterProject> well in advance of a potential launch date.

VPTL maintains [Public Online Course Guidelines](#), which outline Stanford University policy related to the fundamental issues that arise when offering public online courses or any course in which there are participants beyond the Stanford community. View those guidelines here: <https://stanford.box.com/s/ihu4yp16zwbp58p3zvmi>

For questions regarding these guidelines, please contact Marc Sanders at [sandersm@stanford.edu](mailto:sandersm@stanford.edu).

VPTL also provides many resources and services addressing key pedagogical, practical, and legal aspects of creating material for the online learning space. For more information, [schedule a consultation](#) with VPTL. <https://vptl.stanford.edu/getting-started-vptl>

### Public Displays of Movies and Video

Generally speaking, video tapes and DVDs that are purchased, rented, or checked out of the library are for home viewing purposes, unless you have a license to use them elsewhere. That means no license is required to view a recording in your dorm room, or with family or friends. However, any public display - on campus or off - requires a license, unless the display qualifies for the face-to-face teaching exemption, as discussed below. There is a common misconception that you only need a license if you plan to charge a fee to view the movie. Even where do you not plan to charge a fee, you must secure a license unless the narrow face-to-face teaching exemption applies.



To obtain a public performance license, you need to contact a licensing organization. Major firms that handle these licenses include:

Swank Motion Pictures,  
Inc.  
<http://www.swank.com>  
(800) 876-5577

Criterion Pictures  
<http://www.criterionpicusa.com>  
(800) 890-9494

Motion Picture  
Licensing  
Corporation  
(MPLC}  
<http://www.mplc.com>  
(800) 462-8855

### 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. It is not uncommon for copyright owners to bring claims against individual Stanford students and staff members who have engaged in unlawful file-sharing.

Stanford Computer and Network Usage Policy [Administrative Guide 6.2.1](#) requires that use of network and computer resources supports the basic missions of the University in teaching, learning and research. You are responsible for what happens on your system.

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 the Office of Community Standards 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](https://ogc.stanford.edu/sites/default/files/p2p_traffic_advisory_0.pdf)

Free & Legal Entertainment on the Internet. There are multiple options to access legal music, TV and movies on the internet, some of which are free. Some options include:

- 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.
- Amazon Prime: <http://www.amazon.com/prime>  
A subscription service that allows you to stream videos to your phone, tablet or other device.
- Network websites and apps  
Many television networks make programs available to stream on their sites after they are broadcast.

## Publishing

When publishing, faculty and students need to pay special attention to the rights they have in their publications, and the rights they sign 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. Options beyond the traditional assignment of all copyright interest to the publisher 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:
  - post on an institutional website in a PDF format
  - make derivative works
  - make copies for educational purposes
  - allow others to make copies for educational purposes
  - allow the same rights for Stanford/originating institution

One helpful resource is the SHERPA/RoMEO site, which includes a listing of publishers that allow deposit of articles: <http://www.sherpa.ac.uk/romeo/>

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](#). However, granting agencies are increasingly requiring that publications based on funded research be made available in an Open Access or similarly accessible format.

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

- The SPARC author addendum: <http://sparcopen.org/our-work/author-rights/brochure-html/>
- Create Change: <http://createchange.org/>

## Recording & Broadcasting Courses

### Faculty

Before recording and broadcasting a Stanford course (for example, for inclusion in iTunesU), faculty must obtain permission from a cognizant dean, or if the course is intended to be part of a Massive Open Online Course (MOOC), permission must come from the Vice Provost of Teaching and Learning (see below).

Before making any request, faculty should 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 examples 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 likeness and 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 or before and after the recorded segment). 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 Teaching and Learning, [John Mitchell](#), and [Lauren Schoenthaler](#) in the legal office.

Faculty or staff interested in offering a public online course should [register their interest well in advance](#) of a potential launch date. 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 Canvas or other closed systems do not apply in the more open MOOC systems. Similarly, the Face-to-Face teaching exemptions that allow you to use material in your classroom do not apply. Refer to the VPTL's [Guidelines for Public Courses](#) for additional information.

### 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](#).

### Social Media & Web Tools for Teaching

Collaboration tools can enhance the learning environment, but it is important to ensure that any tool used in teaching is compliant with FERPA, the Federal law governing the management of student records. These tools can also raise concerns related to web security, content ownership, and confidentiality.

Because of these risks, social media tools should be vetted and hosted by Stanford whenever possible, to reduce concerns regarding content ownership, 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 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?)
- Privacy concerns (e.g., can students control the distribution of their own content?)
- Content use for non-Stanford purposes (e.g., will the service provider keep a copy of the student-generated content for data-mining or other purposes?)

Faculty should notify students in the syllabus when third-party tools will be used in a course, and should also alert students to the terms of use. Faculty should work with students who are not comfortable agreeing to particular third-party terms – including, where possible, enabling a student to participate in the course without relying on the third-party tools.



## Software Development

Software is regularly developed in support of both research and teaching at Stanford, and questions often arise regarding ownership, management, and potential distribution of that software.

Stanford's Office of Technology Licensing (OTL) is responsible for managing the intellectual property assets of the University. While they are known for their licensing work related to patents, they also support students and faculty in commercializing copyrighted material, including software, where it is appropriate. In 2015, they published a guide, entitled the Creator's Guide to Commercializing Copyrighted Work, to assist creators in understanding the commercialization and distribution issues they will face in this effort.

<https://otl.stanford.edu/documents/OTLCopyrightGuide.pdf>

OTL also offers other guidelines in relation to software, and is also available to respond to questions. Learn more on their website: [http://otl.stanford.edu/inventors/inventors\\_software.html](http://otl.stanford.edu/inventors/inventors_software.html)

## Stanford Profiles

The Stanford Profiles in Stanford's CAP Network (<https://profiles.stanford.edu/>) are designed to automatically pull faculty publications into the profiles in a way that is compliant with both copyright law and Stanford's licensing agreements with journal providers. The system also allows you to load publications into your own profile. If you choose to load your own publications, remember to ensure that your posting is in line with your publication agreement, as not all publishers allow authors to post their publications freely. The Publishing section of this document discusses these concerns in more detail.



## Recommended Practices

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

### 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 it is in the public domain, or 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. There is material on the Internet that is either in the public domain, or is publicly licensed (e.g. CC licensed), but you must confirm the status of any material you hope to reuse.

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.

### 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 Canvas 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.

### Protection of Stanford Course Material

Recently, third party websites have posted Stanford course content without permission. Faculty and TAs are advised to place (c) [copyright symbol] Stanford University 201\_ on all course assignments, syllabi, exams and other materials developed for a course. Students are reminded that the University owns the course content and enrolled students have a license to use the material for class. Students may not distribute the content to others without the permission of the course instructor.



## Request Permission Where Needed

If an exception such as Fair Use or Face-to-Face Teaching 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)

When copyright clearance is needed in an online course, you may also be able to use the SIPX service. You can find more information about SIPX here: <http://www.sipx.com>.

## 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 9.2 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://doresearch.stanford.edu/policies/research-policy-handbook/intellectual-property/copyright-policy>



## Copyright Law Overview

This section outlines areas of US copyright law most relevant to the Stanford community. Stanford's [Copyright & Fair Use](http://fairuse.stanford.edu) 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/](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 they 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 United States 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 (<http://fairuse.stanford.edu>) 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 applies only to online courses restricted to registered students, and so may be applicable for Stanford courses that incorporate an online component. This exemption does not apply to iTunes U or to MOOCs (e.g. Coursera, NovoEd, Lagunita), which are open to students outside of Stanford, and faculty preparing such courses will need to rely on the Fair Use exemption, 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>

## 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/>

## 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.