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Copyright and Creative Commons: Guidelines for Faculty and Student

Mary A. Garofalo, Ph.D.- Research Lead, NTLC

For faculty and students, copyright laws regarding the reproduction and distribution of course materials are sometimes difficult to negotiate. This is particularly true with the rise of digital information used in courses, as well as Open Access Resources. Intellectual property is protected by copyright law. Let's start from the beginning to understand copyright and digital commons in the context of U.S. copyright law.

Copyright Law

The U.S. copyright law (17 U.S.C. 101-122) dates back to 1976 and was written to regulate the distribution of and copying physical materials like books, plays, articles, etc. Over the last 45 years, U.S. copyright law has had to amend the initial copyright law, as the rise of digital material and universal access to material through internet technology (Sweeny, 2006). In essence, copyright law was written and amended as Intellectual Property changed from the physical to the non-physical (websites, apps, technology, algorithms. There have been more than 17 amendments to the U.S. Copyright law -Title 17 since 1976 to make room for all non-physical mediums (apps, technology, processes, etc.) for sharing information. Most recently, the last amendment was added in May 2021, clarifying legal ramifications for copyright infringement, especially focused on the non-physical mediums for sharing information (17 U.S.C. 101-122).

So, what does it mean for faculty and students in U.S. higher education? Great question. Title 17 originally established the "fair use" clause which is the most significant clause in the law as it applies to students and faculty use of copyrighted material for the purpose of learning. "Fair Use" clause established parameters for physical copies of copyrighted materials to be reproduced for face-to-face instruction. However, according to some empirical research on copyright law and online materials, many universities saw a struggle to comply and regulate with copyright laws in their online courses, portals, learning management systems, as faculty are "digitizing, uploading, transmitting" course materials (Sweeney, 2006; Seaman & Seaman, 2017).

What does "fair use" cover today?

Section 107 of the Copyright Act (17 U.S.C. 107) offers a "framework for determining whether something is a fair use and identifies certain types of uses—such as criticism, comment, news reporting, teaching, scholarship, and research—as examples of activities that may qualify as fair use" (U.S. Copyright Office, 2022). There are four areas for consideration when evaluating "fair use":

1. What is the purpose and nature of the use of the materials?
2. What is the nature of the copyrighted work?
3. How much of the work has been utilized?
4. What effect will be created by the use of the material on the market for the original work?

Faculty: Things to consider:

1. Try to limit the “amount” of a work used. Be surgical with what you want students to utilize for your purposes.
2. Limit access to just the students in your class, and just that timeframe that the class runs.
3. Make students aware of the copyright issues of distributing the material outside the class.
4. Avoid copyright materials as a substitute for materials that can be bought or licensed.
5. Always give attribution to the authors through a full citation.

Streaming Audio/ Visual Work:

Kean University has policies for [Acceptable Use](#) and [Electronic File Sharing](#), which include guidelines for streaming video in Learning Management Systems, like Blackboard or Canvas, when the use is essential to the instructional goals in the following circumstances:

1. If the work is in the public domain- meaning can be accessed through public websites/channels;
2. If the copyright holder has given permission;
3. If the faculty member is the author;
4. If the material's license allows for streaming/ file sharing.

Open Educational Resources/ Creative Commons Licensing

Over the last 10 years, there has been a push in educational circles for the adoption of Open Educational Resources in order to create equitable access to high quality course content (Seaman & Seaman, 2017). According to the OER Commons (2018), “OERs are teaching and learning materials that you may freely use and reuse at no cost, and without needing to ask permission. Unlike copyrighted resources, OER have been authored or created by an individual or organization that chooses to retain few, if any, ownership rights.”

Kean University has led the charge of moving to completely OER for all coursework by 2025. In fact, Kean University hosted the first annual [OER Conference in 2021](#), bringing together leading educators and researchers of the field. That said, it is important for both faculty and students to understand how OER and creative commons are different from traditional “fair use” copyright laws.

The Five Rs of OER Use

According to Seibert, Miles and Geuther (2019) and (Wiley, 2022), faculty and students must take the following into consideration when using OER (with a Creative Commons Licensing):

1. Retain- you may make, own and control a copy of the material.
2. Revise- you may edit, change or modify the content.
3. Reuse- you may reuse the original, remixed, revised content publically.
4. Remix- you may combine the material with other existing content to create new content.
5. Redistribute- you may share copies of the revised, remixed, or original content with others.

Creative Commons Licensing (CCL)

Licensing for course content and research materials can be very confusing, especially dealing with OER resources which are a relatively recent educational equity movement. CCL applies to something that is already copyrighted, however it gives the author the rights to dictate how the material can be used (Seibert et al., 2019). In the U.S., a CCL allows the copyrighted content to be used by others, but has parameters of use and distribution, based on different levels of CCL.

In order to obtain a CCL for your own work, you can go to the creativecommons.org website and click on “Share Your Work”.

To find out if your content resources have CCL, you can go to search.creativecommons.org and search the OER resources with a CCL license in your field.

To find out how to give attribution to work with CCL, please visit the [Creative Commons resource section](#) for examples of attribution, what to do, and what NOT to do!

Great OER Resources

Commons, OpenStax, Pixabay, Flickr, Khan Academy, Curriki, MIT OpenCourseware and [Kean Learning Commons OER resources](#).

For further information on Copyright, Attribution, OER, or Creative Commons, please reach out the Nancy Thompson Learning Center: learningcommons@kean.edu

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