



The Campus Guide to Copyright:

From Creative Commons
to Fair Use



About the Author

Matt Siegel has used film as a teaching tool at the United States Air Force Academy, Southern Connecticut State University, and Georgia College. In addition to his roles within literature, writing, and rhetoric programs, he has led numerous interdepartmental initiatives on the topics of multimodal learning, classroom technology, and faculty publishing.

Outside of academia, his work has included consulting in the areas of admissions testing and brand publishing; authoring white papers on the importance of visual rhetoric; and publishing creatively beside such authors as Billy Collins and Sherman Alexie.

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The Pedagogy of Video

Just before the start of the fall 1981 semester—well more than a decade before your average college freshman was born—the MTV network aired its first-ever music video. Their inaugural anthem was equal parts epilogue and prophecy: 1979’s “Video Killed the Radio Star” by a band called The Buggles.

Across the next three decades, the casualties of video (and technology) are too high to count—as are the effects upon classrooms. Blackboards have turned white, media laws have turned gray, and educators have turned against singular modalities that prohibit visual or auditory learning styles.

As a result, we’ve seen a tremendous push toward technology and multimedia, but we’ve left content trailing far behind. We have the laptops, the flat-panel televisions, and the overhead speakers—and yet our library databases remain archaically black, white, and text-based. In the aggregate, faculty are left with Google image searches, YouTube, and elastic fair use policies that wrinkle classroom notions of plagiarism and copyright.

This eBook is meant to iron out some of those wrinkles—and open the floodgates to terabytes of multimedia professionally curated for both students and educators.

Matt Siegel

and former English professor

VideoBlocks Education

PART I:

A USER'S GUIDE TO FAIR USE





The Fog of ^{Fair Use}~~War~~

Let's start with the good news first, shall we? The language behind fair use isn't particularly long or complex. Nor is it revised constantly to render previous versions obsolete. (The Modern Language Association might learn a thing or two from this.) Rather, it's reasonably short, simple, and easy to recall.

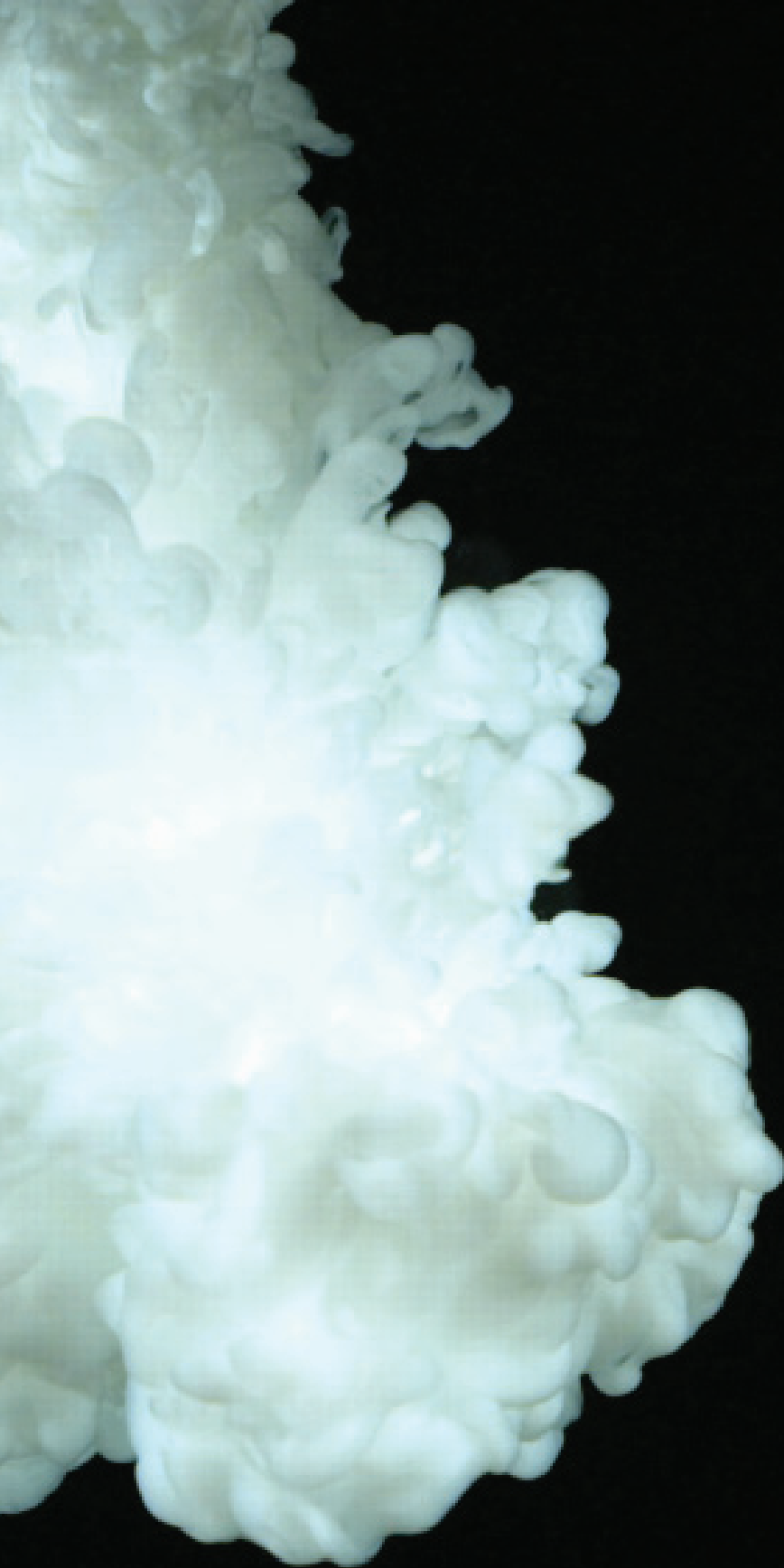
The bad news is that it's short for the same reason a student essay might be short—because the authors behind it didn't have all the answers. That's not to say they were negligent, ill prepared, or “having roommate issues.” It's more technology's fault for being such a moving target and society's fault for constantly inventing new ways to borrow and steal.

As a result, the doctrine of fair use reads less like a multiple-choice final with clear right and wrong answers and more like an essay prompt accompanied by a somewhat fuzzy rubric. In order to distinguish between copyright infringement and authorized reproduction in the classroom, it's therefore necessary to weigh four independent factors: the purpose and character of the material's intended use, the nature of the copyrighted work, the amount and substantiality of the material used, and the effect upon the copyrighted work's value.

**“It is a riddle, wrapped in a
mystery, inside an enigma;
but perhaps there is a key.”**

– Winston Churchill





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Factor One (of Four): Purpose and Character

As a baseline, the use of a copyrighted work for purposes of criticism, commentary, reporting, teaching, scholarship, or research does not qualify as infringement. However, that's only the beginning.

Before moving on to factor two, some further evaluation is necessary in measuring the encompassing work's purpose. The first question to ask here is whether the work is commercial or nonprofit. If you're aiming to share or reproduce a work without paying for it, whether the original is copyrighted or not, the bucket you want to fit into is nonprofit. If your purpose is for the classroom, and students won't be charged for the content, this should be rather easily met, though that doesn't mean you're finished.

Next, you must ask whether or not your use is transformative or if it simply mirrors the intent of the original. That's where classroom use begins to gray. Suppose you're putting together some slides on the physics of black holes, and you plan to make them available for students as a study guide. You'll have a much stronger argument using footage from *Interstellar* (a sci-fi film) than *Into the Universe* (a documentary on physics).

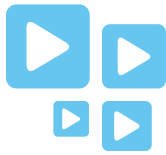
Using footage of Matthew McConaughey to highlight *Hollywood's scientific faults* adds a new educational purpose to the fictional film, whereas using footage of Hawking to teach theories of Hawking might be as derivative as it sounds.



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Factor Two (of Four): Nature of the Copyrighted Work

No one said the factors of fair use have to play nicely together—and they often don't.

While the previous factor gave an edge to a fictional film versus a factual documentary, courts generally grant more copyright protection to creative works than instructional works. To understand why, you need only look toward the United States Constitution, which includes a specific clause “to promote the progress of science and useful arts.”

Often referred to as the copyright or progress clause, this line from Article 1, Section 8 is essentially a forward-thinking attempt to promote learning. By granting scientists and innovators exclusive rights to their work by way of copyrights and patents, we provide incentive for them to continue their contributions to society.

Yet these same rights might actually prevent some forms of progress by hindering the free spread of ideas. For this reason, work that stands to benefit the greater good of the public is sometimes granted immunity against copyright infringement.

Hawking's *Into the Universe* might not qualify for this exception, but the Zapruder film did—prompting a court to rule that the public interest in thorough examinations of President Kennedy's assassination justified the reproduction of film slides without license or permission from the owner.



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Factor Three (of Four): Amount and Substantiality

This third factor weighs just how much you aim to borrow, as well as the (subjective) importance of it.

As a general guideline, the less you aim to use, the more you can justify fair use. Of course, this measurement alone isn't enough. In addition to tangible numbers like word count or duration of footage, courts also account for the intangible quality or magnitude of a selection.

In either case, there's no real yardstick. Some cases of borrowing one percent of a work have been upheld as fair use, while others have been deemed infringement—and the same goes for cases of borrowing more than fifty percent of a work.

Confused? Take only small bites—and remember to leave some meat on the bone—and you should do fine.



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Factor Four (of Four): Effect Upon Value

Continuing with another food metaphor, the final factor addresses whether or not your use of a work is taking food off anyone else's table, in which case it's not deemed "fair."

Will your copying an essay from so-and-so's book mean your students no longer have to purchase that book? If so, you could be in danger of copyright infringement.

Keep in mind that the owner of a copyright doesn't need actual sales in order to claim damages; courts will consider the "potential market" in addition to verified sales, and they may even consider the effect upon the market as a whole.

Still, damages to the market are normally actionable only when caused by unauthorized reproduction of a work or piece of work, not mere criticism of it—so you're free to teach by way of parodies and reviews.

PART II:

COOPERATING WITH CREATIVE COMMONS



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Decoding Creative Commons Codes

Unlike fair use, which is determined by four legal factors (and not the wishes of the copyright holder), Creative Commons licenses are add-ons to copyright that grant specific terms of use as selected by the holder.

By default, anything under copyright is protected against reproduction or modification, with few exceptions including fair use and public welfare. However, the creators or owners of a copyrighted work can elect to waive these protections in the presence of certain conditions.

There are four basic codes of Creative Commons licenses, outlined in the following pages: Attribution, ShareAlike, NoDerivs, and NonCommercial.

When a user uploads a video or image to a service like Google, Flickr, or YouTube, she has the option to select one or more of these license codes. Others can then filter their search results to display only content licensed under desirable terms.



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Attribution is the widest of Creative Commons license codes, allowing others to reproduce, modify, or build upon an original work (commercially or not) as long as appropriate credit is given to the copyright holder.

Normally, attribution means simply including the name or username of the copyright holder and providing a link or method of locating the original work.

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Adding on to Attribution, this license adds a requirement for any resulting new works that arise from the original—such as modifications, tweaks, or improvements—to be “shared alike” using the same open license.

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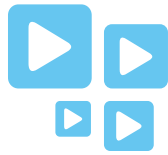
Think of this as the pass-it-forward or what-goes-around-comes-around license—one probably not ideal for those who wish to be sole proprietors or draw profits from their research.



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The NoDerivs (short for no derivatives) suffix grants use for reproduction as long as the copyrighted work remains entirely unchanged from its original state.

Essentially, others are free to use and distribute a NoDerivs image or video as-is, but cannot under any circumstances modify or transform it to any degree without automatically revoking the license.

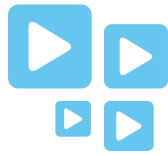
Think of this as the leave-no-trace license, as the involved works should be passed on essentially untouched.



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Creative Commons: NonCommercial (CC NC)

Adding the NonCommercial code to a license, as the name suggests, restricts others from using the licensed material for profit.

Users are still free to modify, improve, and build upon the work, but the purpose of the use must be wholly non-profit.

You can go ahead and call this the anti-capitalist license; it will work in your classroom whenever students aren't paying for materials—but not in the textbook chapter you're contracted to write.

PART III:

ROYALTY-FREE (AT LAST)

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The License That Made All Uses Equal

Royalty-free licenses are in a category of their own; when we purchase content for **our royalty-free library**, we secure the rights for our customers to use it without conflict or gray stipulations.

Here's what that looks like mapped against the factors from previous chapters.

| I Need Content... | Fair Use | CC BY | CC SA | CC ND | CC NC | VideoBlocks Subscription (Royalty-Free) |
|--|--|------------------|---|---------------------------------------|------------------|---|
| To use at-will | NO | NO | NO | NO | NO | YES |
| To use without profit | If also transformative, insubstantial, and inconsequential to the market | With attribution | With attribution and surrendered rights | With attribution and no modifications | With attribution | YES |
| To use commercially | NO | With attribution | With attribution and surrendered rights | With attribution and no modifications | NO | YES |
| To modify | If also non-profit, insubstantial, and in consequential to the market | With attribution | With attribution and surrendered rights | NO | With attribution | YES |
| That won't be attributed | NO | NO | NO | NO | NO | YES |
| That I can call my own | NO | NO | NO | NO | NO | YES |
| That is prescreened for subject matter | NO | NO | NO | NO | NO | YES |
| That is curated in one location | NO | NO | NO | NO | NO | YES |
| That is ready to download | NO | NO | NO | NO | NO | YES |



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With VideoBlocks, faculty, students, and staff can focus on being creative instead of spending their valuable time searching for questionably legal content for their projects and assignments.

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