



University of North Alabama

Employee Policy Manual and Handbook

Use of Copyrighted Materials Policy

The University of North Alabama is committed to complying with the laws protecting the rights of copyright holders while recognizing that those rights permit certain educational uses, including fair use, of copyrighted materials. Faculty, staff, students and others working for or on behalf of UNA ("personnel") bear the responsibility to make informed decisions regarding the proper use of copyrighted materials and are obligated to comply with Federal Copyright law ([Title 17 U.S. Code](#)).

1. BACKGROUND

Copyright Law gives creators of original works the right to control how others use, reproduce, distribute, perform, display or use their works. Works protected by copyright include, among other categories: books, articles, instructional materials, and other written works; musical and dramatic works; pictures, films, videos, sculptures and other works of art; computer software; and electronic chip designs. As a result, use of another's work generally requires the permission of the rights holder, unless the work is in the public domain, or a statutory exception applies. The exceptions most likely to apply in the academic setting are the statutory Classroom Exception, the TEACH Act, and the Fair Use exception.

It can be difficult to determine the copyright status of a work and whether the use qualifies for one of the exceptions to the requirement to obtain permission for use of the work. The Office of the Provost and Executive Vice President for Academic Affairs and the library staff are available to assist in making decisions regarding the use of copyrighted materials.

2. APPLICABILITY This Policy applies to all UNA personnel and to all copyrighted material.

3. DEFINITIONS

a. Rights of the Copyright Owner (17 USC § 105):

The owner of a copyright has the exclusive right to:

- i. To reproduce the work;
- ii. To prepare derivative works;
- iii. To distribute copies or phono records of the work to the public by sale, rental, lease, or lending;
- iv. In the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the work publicly;
- v. In the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- vi. In the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

b. Copyrightable Works: Copyrightable works of authorship are those that are fixed in a tangible medium and among other categories may include: books, articles, instructional materials, and other written works; musical and dramatic works; pictures, films, videos, sculptures and other works of art; computer software; and electronic chip designs.

- c. Fixed in a Tangible Medium (17 U.S.C. § 102): A copyright interest arises in a Work once it is "fixed in a tangible medium" of expression. A tangible medium is one from which the Work can be perceived, reproduced, or otherwise communicated, directly or with the aid of a machine or device.
- d. Non-Copyrightable Material. Copyright interest does not extend to and copyright law does not protect ideas, procedures, processes, systems, methods of operation, concepts, principles, facts or discoveries, regardless of the form in which they are described, explained, illustrated, or embodied in a Work.
- e. Categories of Works: Works typically fall into one of the following categories:
 - i. literary works;
 - ii. musical works, including any accompanying words;
 - iii. dramatic works, including any accompanying music;
 - iv. pantomimes and choreographic works;
 - v. pictorial, graphic, and sculptural works;
 - vi. sound recordings; and
 - vii. architectural works.
- f. Ordinary Use of Resources. Ordinary use of UNA resources occurs when an author/creator uses UNA resources or facilities in a manner consistent with use expected for the day to day performance of the individual's obligations to UNA, such as ordinary use of library facilities, office space, office supplies or equipment including copiers, telephones, and fax machines, or UNA owned personal computers or other electronic devices.
- g. Public Domain. Copyrights exist for a set amount of time and once the copyright expires, the work is in the public domain and can be used without obtaining further permission. However, copyright lasts for decades, not years, and the actual duration of a copyright varies based on a number of factors, so it is always important to properly determine if a copyright has expired.
- h. Substantial Commitment of Resources. UNA makes a substantial commitment of resources to a Work if the author/creator makes use of UNA personnel, equipment and/or facilities beyond the Ordinary Use of Resources. A substantial Commitment of Resources by UNA may include, for example purposes, use of laboratory facilities, designated research equipment, equipment of any kind provided through a grant or corporate sponsorship, or work or materials the funding for which was otherwise subsidized by UNA.
- i. Work Made for Hire (17 U.S.C. § 101):
 - i. A "work made for hire" is: (a) a work prepared by an employee within the scope of their employment; or (b) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a signed written agreement that the work shall be considered a work made for hire.
 - ii. *Supplementary Work*. A "supplementary work" is a Work prepared for publication as an addition to or revision of the Work of another author for purposes of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, after words, pictorial illustrations, maps, chairs, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes.

- iii. *Instructional Text.* An "instructional text" is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

4. SECURING PERMISSION

Anyone who wishes to use a copyrighted work as a part of the creation of scholarly, instructional, or work-related materials or media must either confirm the work qualifies for an exception to the requirement to obtain permission or must obtain written permission from the copyright owner. Email correspondence is sufficient to meet the requirement for a writing, but permission granted in a phone call or other verbal conversation is not sufficient. The permission must specify the use that is permitted, for example, display in a live classroom, use in virtual learning, distribution to students, posting in a learning management system, use in course materials, use in lectures outside of the classroom or for speaking engagements, etc.

If the permission from the copyright owner requires a fee, the person seeking permission to use the copyrighted work is responsible for ensuring that funds are available to cover such fee. If the permission from the copyright owner requires negotiation of a license or other agreement granting permission, such license or agreement must be approved in accordance with standard UNA procedures for contract approval.

5. QUALIFYING FOR AN EXCEPTION

The three most common copyright authorization exceptions are outlined here. Anyone choosing to make use of another's materials with the belief that it is permitted under one of these exceptions should document their determination that the exception applies and maintain such documentation as outlined in Section 6 below. If there is any question as to the applicability of the exception, UNA's General Counsel should be consulted.

a. Classroom Exception

Just as it sounds, the Classroom Exception allows for the performance or display of copyrighted works by faculty or students when they are face-to-face in a physical classroom. To qualify for this exception:

- i. The use must be face-to-face in a physical (not virtual) classroom;
- ii. The materials being performed or displayed must be legally obtained; and
- iii. The use must be made on behalf of a non-profit educational institution.

This exception does not cover use of material in a virtual classroom, reproduction or distribution of materials as part of handouts or assignments, use in learning management systems, or in an e-reserve system. If you need to use copyrighted materials for those purposes see the exceptions for the TEACH Act or Fair Use.

b. TEACH Act

The Technology, Education, and Copyright Harmonization Act of 2002 ("TEACH Act") updated Section 110 of the Copyright Act to provide for use of copyrighted materials in certain virtual education settings. The implications of the TEACH Act are nuanced, but it generally expands an educator's ability to perform and display copyrighted works in digital online instruction settings, without permission of the copyright holder. However, as with the Classroom Exception, there are conditions that must be met to qualify for this exemption. Application of those conditions is often detailed and confusing and fair use should be considered as an alternative exception in those situations.

The TEACH Act permits:

- i. Transmitting performances of all of a non-dramatic literary or musical work. This includes poetry or short stories, but does not include audiovisual works, and musical works except for opera, music videos, and musicals.
- ii. Transmitting "reasonable and limited portions" of any other performance. This includes audio visual works such as films and videos and dramatic musical works, but the use must be for reasonable and limited portions.
- iii. Transmitting displays of any work in amounts comparable to typical face-to-face displays. This includes all types of still images.
- iv. In addition to the requirements regarding the types of works, these additional requirements apply:
- v. The performance or display must be by or at the direction of, or under supervision of, an instructor, and be conducted as an integral part of a class session at an accredited nonprofit educational institution.
- vi. The performance or display must be directly related and of material assistance to the teaching content of the transmission.
- vii. The transmission must be solely for, and to the extent technically feasible, the reception of the transmission must be limited to students officially enrolled in the course.
- viii. The institution involved in the transmission must have implemented policies related to copyright that at a minimum inform students that certain course materials may be copyrighted and further use of such materials is prohibited.
- ix. To the extent possible, technological protection must be applied to the digital transmission to prevent the ability to copy, redistributed, modify or otherwise use the copyrighted materials outside of the educational purpose.

The TEACH Act does not cover supplemental online reading, viewing, or listening materials.

c. Fair Use

Fair Use (17 U.S.C. § 107) is the most commonly relied upon exception for the use copyrighted materials without obtaining permission. However, while fair use is more common in educational settings, not all academic use qualifies as fair use.

Generally, fair use permits the use of a copyrighted work "for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research..."

The four key factors used to determine whether use of a work qualifies as "fair use" are:

- i. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; Activities limited to the support of educational efforts are more likely to qualify as fair use. Uses that are "transformative" in nature are more likely fair use. To be transformative, the use must add or change the original work in a way that gives it new expression, meaning or message. Incorporating quotations into a paper or pieces of a work mixed into a multi-media product for teaching are usually transformative in nature. Criticism or critical analysis of a work also tends to favor fair use.
- ii. The nature of the copyrighted work – fiction or factual or a combination;

Works that are unpublished are less likely to qualify as fair use. Excerpts of informational and factual works for educational purposes are more likely to qualify as fair use. Use of materials such as test forms or workbook pages that are intended to be used and repurchased are less likely to qualify as fair use.

- iii. The amount and substantiality of the portion of the work used in relation to the copyrighted work as a whole;
The amount of the work is analyzed both quantitatively and qualitatively. There is not a hard and fast line for the portion of the work that may be used, but the portion of the work to be used should be narrowly tailored to meet the educational purpose.
- iv. The effect of the use upon the potential market for, or value of, the copyrighted work.
The impact on the value of the work is closely linked to the purpose of the use, and considers whether the use impacts the creator's ability to make a living from the work. If the work is being used for a commercial purpose, any adverse effect on the creator's ability to earn money from the work weighs against fair use. Producing copies of an entire work to save money for students is almost never a fair use. Similarly, if a digital, academic license for excerpts is available for a reasonable price, then use of the excerpt is likely not a fair use.

All four factors must be considered to determine whether each use is a fair use. Each factor is given equal weight. The goal is to achieve a balance between the rights of the copyright holder with the rights of the public. Fair use is also technologically neutral so the same analysis may be applied to any medium.

This link (<https://copyright.columbia.edu/basics/fair-use/fair-use-checklist.html>) includes a checklist you may find helpful in determining whether your activity(s) is within the limits of fair use under U.S. copyright law. Another resourceful checklist can be found here (<https://www.lib.psu.edu/ucp/fair-use>).

- d. Other Exceptions for Use of Copyrighted Materials These exceptions may be relevant for some use of copyrighted material.
 - i. Reproduction by libraries and archives (<http://www.copyright.gov/title17/92chap1.html#108>)
 - ii. Effect of transfer of particular copy or phonorecord (<http://www.copyright.gov/title17/92chap1.html#109>)
 - iii. Exemption of certain performances and displays (<http://www.copyright.gov/title17/92chap1.html#110>)
 - iv. Secondary transmissions of broadcast programming by cable (<http://www.copyright.gov/title17/92chap1.html#111>)
 - v. Ephemeral recordings (<http://www.copyright.gov/title17/92chap1.html#112>)
 - vi. Computer programs (<http://www.copyright.gov/title17/92chap1.html#117>)
 - vii. Secondary transmissions of distant television programming by satellite (<http://www.copyright.gov/title17/92chap1.html#119>)
 - viii. Reproduction for blind or other people with disabilities (<http://www.copyright.gov/title17/92chap1.html#121>)
 - ix. Secondary transmissions of local television programming by satellite (<http://www.copyright.gov/title17/92chap1.html#122>)

Anyone who wishes to use copyrighted materials within the scope of these exceptions must be able to document their justification or rationale for meeting the terms of the exceptions.

6. RETENTION OF RECORDS. The following policy statements are for the protection of UNA personnel in the event that their use of copyrighted materials is called into question.

- a. Persons who receive explicit permission to use copyrighted materials shall retain the record of these permissions in accordance with the [Public Universities of Alabama Retention Schedule](#).
- b. Persons who use copyrighted materials under one of the statutory exceptions shall retain their written justification for this use in accordance with the [Public Universities of Alabama Retention Schedule](#).
- c. These records and justifications must be available at any time upon request.
- d. If an item that contains copyrighted material becomes wholly or partly the property of UNA then a copy of the permission to use or the justification for use of the copyrighted material must be submitted to and stored with the Office of the Provost and Executive Vice President for Academic Affairs.

7. OPEN EDUCATIONAL RESOURCES/CREATIVE COMMONS LICENSES.

- a. "Open Educational Resources" ("OER") are any type of educational materials that are distributed in a manner that allows for free use and reuse, without the need to ask for permission. The specific rights granted may vary between materials, or the works may be licensed under Creative Commons licenses. OER can include textbooks, curricula, syllabi, lecture notes, assignments, tests, projects, audio, video, animation and more. <https://oercommons.org/>
- b. Creative Commons is a similar initiative that may also include educational materials. Creators of these works make them available to the public with limited restrictions. Creative Commons licenses include:
 - i. Attribution – the author must be credited, usually using the title of the work, author of the work, source of the work and the license that bears the work.
 - ii. Non-commercial – you cannot profit from use of the work.
 - iii. No derivatives – you cannot change the work, even in minor ways.
 - iv. Share alike – whatever you do with the work, the result must bear a share alike license for others to use.

<https://creativecommons.org/>.

8. A NOTE ABOUT WORKS ON SOCIAL MEDIA

Just because it is possible to download works from social media does not mean that it is permissible. Most content in social media is protected by copyright. In addition, the terms of use of most social media platforms prohibit the downloading of content without permission.

The document concerning Copyright Resources may be found in the next section.

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