

A Framework for Analyzing any U.S. Copyright Problem

One of the most difficult issues for educators, scholars, and students, when faced with a copyright problem, is simply knowing where to begin ----- which parts of the legal rules and doctrines apply to the specific problem?

To deal with this uncertainty, we suggest working through the following five questions, in the order they are presented. They are **simple** questions, but they are **not easy** to answer; by working through them **in order**, it is possible to identify which of the parts of copyright law apply to the specific problem that you need to address.

1. Is the work protected by copyright?

- a. Is the work: **1) creative**, **2) original**, and **3) fixed in a tangible medium of expression** (e.g. physical or digital)? A work must meet **all three conditions** to receive copyright protection.
- b. If the work is creative, original, and fixed in a tangible medium of expression, is it in the **public domain**?
[Digital Copyright Slider](#)
This tool will help you determine if a work is in the **public domain**. Other works in the public domain may include works created by the **U.S. government** and some works created by **state governments**.

2. Is there a license that covers my use?

- a. Is there a **Creative Commons (CC) License** attached to the work? If so, can I comply with the [terms of the license](#) or find another useful work that is CC-licensed? [Search Creative Commons](#)
- b. If affiliated with an **educational institution**, is there a **license** that governs how the copyrighted material I'm accessing through my library can be used? If you are uncertain, your librarian should be able to help you. If K-State faculty/instructor, try [providing permalinks to library-licensed e-resources](#)

3. Is there a specific exemption in copyright law that covers my use?

- a. Is my intended use covered by a **specific exemption** to the exclusive rights in the copyright law, such as the ones for **libraries** or for **education**?

Helpful Resources and Tools

- [Know Your CopyRights for Teaching](#)
- [A Tool to Exceptions for Instructors in U.S. Copyright Law](#)
- **K-State TEACH Act Checklists**
 - [Use of dramatic works](#)
 - [Use of nondramatic works](#)
- [Generic TEACH Act Checklists](#)

4. Is my use covered by fair use?

- a. Evaluate your use with the **four factors of fair use**:
 - i. the **purpose** and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes. Use that is more **transformative** (such as parody) is more in favor of fair use. Questions for **transformative fair use** under factor one:
 - i. Does the copyrighted material **help me make my new point**?
 - ii. Will it **help my readers** or viewers **get my point**?
 - iii. Have I used **no more than is needed** to make my point? (Is it "just right"?)
 - ii. the **nature** of the copyrighted work;
 - iii. the **amount** and substantiality of the portion used in relation to the copyrighted work as a whole; and
 - iv. the **effect** of the use upon the potential **market** for or value of the copyrighted work.

Helpful Resource & Tool

- [More on the Four Factors of Fair Use](#) – explains what is and is not in favor of fair use
- [Fair Use Evaluator Tool](#) – helps with your evaluation and creates a PDF for your records.

5. Do I need permission from the copyright owner for my use?

- a. If so, first locate the copyright owner and fully explain your intended use in your permission request. [Requesting permission guidelines](#) – explains how to ask for permission and what to ask
- b. If no response or if the answer is no, either re-evaluate fair use or consider using another work, such as a work in the public domain or a Creative Commons licensed work.

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