

A Guide to Copyright, Fair Use, and Creative Commons in the United States

Craig E. Shepherd, University of Memphis

OVERVIEW

This multi-day lesson introduces preservice teachers to copyright laws and how they influence resource use. The lesson also introduces fair use principles and components of a fair use claim before describing the limitations of fair use for practicing teachers. Creative Commons licenses are then introduced and explained as a better approach for resource use. Creative Commons resources are still protected by copyright law. However, the authors/owners of these works automatically grant some use rights under specified conditions. This granting of rights leads to a discussion about open education resources (OER). After this discussion, learners discover how to locate Creative Commons resources, cite them, and use them appropriately.

Time: Two, 50-minute classes

Topics: Copyright, Creative Commons, Fair Use, Preservice Teacher

MATERIALS

- Internet-enabled computer and projector
- [Copyright and fair use presentation](#)
- Internet devices for learners to search for Creative Commons resources
- List of Creative Commons sites (from examples provided in lesson)
- Reading about [Copyright and Open Licensing](#) (Kimmons, 2018)
- [Stackable lamp game](#) case (Smith, 2017)
- [U.S. Copyright Office \(2022\) Fair Use Index](#)
- [University System of Georgia \(n.d.a\) Fair Use Checklist](#)
- [Reading Allowed: Fair Use Enables Translating Classroom Practices to Online Learning](#) (piijipvideo, 2020)
- [Google Sites](#) or word processor for learners
- [Copyright/Creative Commons Quiz](#)

CONTEXT AT A GLANCE

Setting

A face-to-face technology integration course for preservice teachers at an urban, mid-size, southeastern United States university.

Class Structure

The course was a 15-week, 3 credit-hour, project-based course required for learners entering any teacher education program. Learners met twice a week and provided their own computing devices. Course topics built on each other.

Organization Norms

This was the only course solely dedicated to technology integration. It focused on technology use to support previously identified objectives. Each section included myriad education majors (e.g., early childhood, secondary science, history, physical education).

Learner Characteristics

Most learners were undergraduate freshmen or sophomores beginning their teacher education program. Most lacked subject matter and pedagogical skills.

Instructor Characteristics

The instructor has a Ph.D. in instructional technology. He has taught basic copyright lessons since 2008 and is familiar with PK-12 technology integration.

Development Rationale

Learners could easily locate media online. However, they rarely understood how they could use media for instructional purposes. This lesson helped them better navigate media selection for teaching.

Design Framework

Events of Instruction (Gagné et al., 1992)

SETUP

This lesson was developed for face-to-face instruction but was previously adapted for online learning prior to COVID-19. A class or two prior to the lesson, assign the reading [Copyright and Open Licensing](#) (Kimmons, 2018). The first day covers basic copyright guidelines and fair use. First day delivery is largely lecture- and discussion-based.

Setup the room so that learners can view presentation materials and discuss them in small groups and as the whole class. Familiarize yourself with the [stackable multicolored lamp game](#) case (Smith, 2017) and a few [Fair Use Index](#) cases (select appropriate cases; United States Copyright Office, 2022) for discussion.

The second day introduces Creative Commons resources and provides guidance to locate and use them. Learners will search for Creative Commons resources and learn how to provide attribution. Provide a list of search tools to learners (see Day 2, Locating CC Media section, for a sample list). Setup a space where learners can conduct internet searches but still participate in small and whole class discussion.

STANDARDS

This lesson aligns with the International Society for Technology in Education (ISTE) Standards for Educators 2.2.c, 2.3.b, and 2.3.c (ISTE, 2017):

CONTEXT AND SETTING

This lesson was developed as part of a larger unit on creating online instruction in a three-credit hour, 15-week, introductory technology integration course for preservice teachers. The course took place in an urban university setting in the southeast United States. This course was required of all education majors and was taken near the beginning of their degree programs. As such, most learners completed this course during their freshman or sophomore year and lacked content and pedagogical knowledge associated with their field. Some sections of the course were delivered online while others were primarily delivered face-to-face. This lesson was designed for a face-to-face section. The section met in a classroom with small tables and chairs to

accommodate ~20 learners. The room included a whiteboard, instructor computer station and LCD projector. Normally, the course was taught in a computer lab, however, for this specific face-to-face section, building construction prevented this. Fortunately, all learners brought their own laptop and smartphone.

At the time of implementation (about one month into the course), 17 learners were enrolled. Most had enrolled in the university following high school graduation. Thus, most learners were in their late teens or early twenties. All but one was female, two were Latina, three African American/Black, one Middle Eastern, and 11 White Caucasian. Majors included early childhood, elementary, and special education, world languages, mathematics, human development, and English literature.

Prior to this lesson, learners were introduced to various technology integration principles, including the International Society for Technology in Education standards (ISTE, 2017) and Technological Pedagogical Content Knowledge (Mishra & Koehler, 2006). Learners were taught that effective technology integration occurs when it aligns with previously identified goals and objectives. Learners practiced developing objectives using the audience, behavior, conditions, and degree (ABCD) method (Smaldino et al., 2019). They were also introduced to principles of Universal Design for Learning and considered multiple means of engagement, representation, and expression (Meyer et al., 2014; Michela, 2018). With this knowledge, learners were given an assignment to select an audience-appropriate topic of their choice, write two to three learning objectives, and develop a website to present all information needed to meet those objectives. Web development naturally led to conversations about media use and copyright.

In years past, the instructor noticed that most learners recognized they could not copy popular music, films, or television shows. However, they were less certain about their ability to use those resources for educational purposes. Additionally, while learners regularly posted images and video on social media (mainly Instagram and TikTok), they did not know what media they could legally modify, share, and repost online. They seemed aware that copyright protected authors but were unsure of specifics. Many learners knew that teachers could use copyrighted works for educational purposes but lacked specific knowledge. Several believed it was okay to use media from Google search results for any educational

purpose. Many also believed that citing Google as a “source” was sufficient for media use.

The course instructor appreciated project-based assessments. Whereas group discussions, final thoughts, mind maps, and other formative assessment strategies were used to ascertain knowledge during lessons, projects were used as summative assessments. Prior to beginning a project, learners were provided with one or more examples and a rubric. Often, concepts learned in earlier units were continued in current projects. Thus, skills developed during this lesson became requirements of later projects.

Once principles of copyright were introduced, learners were expected to obtain permission to use copyrighted media during subsequent assignments. This meant that learners either had to create their own media, use media in the public domain, use Creative Commons media, or obtain permission to use copyrighted media. The instructor knew this requirement discounted fair use claims and was stricter than what learners would experience in their eventual classrooms. However, because this was the only course known by the instructor to cover copyright and Creative Commons content, repeat exposure was desired to help learners consider responsible media use.

LEARNING REPRESENTATION DAY 1

During this lesson, italic text identifies instructor notes. Regular text indicates content to be presented.

Day one introduces copyright principles, exceptions to copyright, and fair use guidelines. Based on learner inexperience with the subject and time limitations, lecture and discussion were selected as delivery vehicles (Smith & Ragan, 2005). copyright and fair use presentation slides follow key points.

GAIN ATTENTION (5 MINUTES)

Begin a brief discussion to introduce copyright. Questions might include:

- Are we allowed to copy/share whatever we want with whomever we want?
- What are some things we cannot legally copy/share with others?

- Why can we allow a friend to watch a movie in our house but not share it in a public venue?

Indicate that learners will gain information about copyright principles in the United States and how it relates to their work as teachers. Inform learners that this lesson introduces those principles but does not serve as specific legal guidance or advice.

OBJECTIVES (1 MINUTE)

State that by the end of the lesson, the learner will be able to:

- Identify three requirements for a work to be considered for U.S. copyright.
- Identify four rights granted to copyright authors/owners.
- Identify four works that cannot be copyrighted in the United States.
- Describe fair use and identify three uses it protects.
- Describe four primary conditions used to determine fair use.
- Describe three ways that copyright laws affect classroom teachers.

COPYRIGHT BASICS (5-7 MINUTES)

If desired, cue the presentation to help introduce this information. This section corresponds with copyright and fair use presentation slides 2-6.

Indicate that copyright is a law granting rights for distribution and marketing to authors/content creators. According to the United States Copyright Office (n.d.), copyright laws only protect works that are:

- original
- creative
- captured in a tangible medium (see also United States Patent and Trademark Office, 2021)

Indicate that copyright law grants four exclusive rights to its creators. These include the right to:

- reproduce the work
- prepare derivatives (e.g., translations, audio and video productions, abridgements)
- distribute copies publicly
- perform or display works publicly (United States Copyright Office, n.d.; University System of Georgia, n.d.a)

Provide examples or images of works that can be copyrighted (e.g., paintings, movies, audio recordings, dance choreography, computer software; see copyright and fair use presentation slides 5-6). Showing any type of work will suffice.

Indicate that copyright happens automatically once creative and original works have been produced in a tangible medium. No government registration or copyright symbol is necessary, although those protections are beneficial (United States Copyright Office, n.d.; University System of Georgia, n.d.a).

EXAMPLES (5 MINUTES)

Following direct instruction, provide a few examples for learners to consider. Copyright and fair use presentation slides 7 and 8 can be used to help depict these examples. After presenting each example, discuss whether the work is copyrightable.

Possible questions might include:

- What are the specifications copyrighted works must meet?
- Is the work original? Creative? Captured in a tangible medium?

EXAMPLE 1

Indicate that inspiration struck while you were sitting in a fast-food restaurant. You quickly scribbled down a poem on a dirty napkin. Ask learners if the poem is copyrighted.

Have learners assume that the poem is original and creative (not “roses are red, violets are blue...”). Help them realize that once it is captured in a tangible medium, the poem is copyrighted according to U.S. law. However, also help learners realize that the author should take additional measures to safeguard the copyright (United States Copyright Office, n.d.).

EXAMPLE 2

Share the story of the [Stackable Multi-Color Lamp Game](#) (Smith, 2017) and ask learners if it is copyrightable.

Use similar questions as the previous example.

Indicate that the second example does not pass the originality/creativity test as it is clearly derived from the game Tetris (Smith, 2017).

UNPROTECTED BY COPYRIGHT (2 MINUTES)

Explain that copyright laws seek to balance the rights of content creators with those of societal progression (Kimmons, 2018). Original works are protected through copyright but not their ideas, processes, and methods—though these may be protected through other laws like patents. This section of the lesson aligns with *copyright and fair use presentation slides 9-11*.

Inform learners that several works are not protected by copyright law. These include:

- The organization and presentation of basic facts and general knowledge,
- Ideas processes and methods (United States Patent and Trademark Office, 2021),
- Anything published before January 1, 1926 (Jenkins, n.d.),
- U.S. government works not subcontracted out (Copyrightlaws.com, 2021; University System of Georgia, n.d.b), and
- Logos, short phrases, and titles—though they may be protected by other laws (United States Copyright Office, n.d.).

Explain that these works can be freely used, shared, modified, and sold without permission.

Pay particular attention to works published before January 1, 1926.

Indicate that these works are in the public domain. This means individuals can use them for any reason without requesting permission (Jenkins, n.d.). Some authors automatically place their works in the public domain so that others can use them freely.

FAIR USE INTRODUCTION (15 MINUTES)

This section of the lesson aligns with copyright and fair use presentation slides 13-23.

Inform learners that obtaining copyright permissions can be a headache. Users need to identify the copyright owner (which can be difficult to do) and then seek permission from them to use copyrighted works (Harper, 2022). This may involve licensing fees and other requirements.

Explain that because the Federal Government seeks to balance the author’s rights with “freedom of expression”, guidelines were established for using

copyright protected media without obtaining permission from the author/owner under certain circumstances (United States Copyright Office, 2022, “About Fair Use” section). These circumstances include tasks like news reporting, teaching, criticism, and research. Explain that these guidelines were updated in 2002 under the TEACH Act to also consider digital media uses (Harper, 2022).

Indicate that four main criteria are used to determine if use without permission constitutes fair use:

- The purpose of the use.
- The nature of the copyrighted material.
- The amount of the material used in relation to the whole.
- The effect of the use on the market (United States Copyright Office, 2022).

The following sub-sections list how these criteria might be considered in fair use judgements. Present each bulleted item and link them back to the criteria being presented. Additionally, indicate that The University System of Georgia (n.d.b) developed a [fair use checklist](#) to help instructors consider these criteria as they make media use decisions. Have learners open a copy of the checklist (or present it to the class) as you review these sub-sections.

PURPOSE OF USE

- Works used for educational purposes are more likely to be considered fair uses than works used commercially.
- Works housed in password protected systems only available to learners (e.g., learning management system) are viewed more favorably than those housed in open systems (University System of Georgia, n.d.b).
- Works used to make comparisons, for critical analysis, comment, or for research are more likely fair uses (University System of Georgia, n.d.b).
- Uses that transform the work into something different or new are more likely to be considered fair uses.

Take time to clarify transformative uses.

Describe that transformation from a teaching perspective aligns with clearly stated learning goals and objectives (prijpvideo, 2020). For example, explain that critiquing a photograph to examine composition elements like lighting, rule of thirds, exposure, depth of field, and so forth may transform

the use into an educational discussion where the focus becomes composition elements as opposed to photo distribution. The photo was used to setup the learning environment—and educational space.

Introduce the video “[Reading aloud: Fair use enables translating classroom practices to online learning](#)” (prijpvideo, 2020)

State that shortly after the COVID-19 Pandemic began in the United States, a group of law professors, lawyers, and librarians held a panel discussion to discuss what fair use meant for teachers seeking to use copyrighted works in online environments both during and after the pandemic (prijpvideo, 2020). They focused particularly on reading copyrighted works aloud in online settings and how course goals may transform those readings into something new.

Although the entire 90-minute video is relevant, show clips at 58:25 to 1:00:51 and 1:02:15 to 1:04:32 (listed on the copyright and fair use presentation slide 28). These clips, highlight the idea that copyrighted works can be transformed into something new based on classroom goals, norms, and settings. After presenting and discussing these clips, continue presenting fair-use criteria.

NATURE OF COPYRIGHTED MATERIAL

- Nonfiction works are more favorable to establish fair use claims than fiction works (United States Copyright Office, 2022).
- Published works are more favorable for fair use claims than unpublished works (United States Copyright Office, 2022).
- It is more difficult to claim fair use when using works that are meant to be consumed once (e.g., worksheets, test forms).

EXTENT USED

- No exact measures exist for what constitutes fair use, however, uses that incorporate less of the work are viewed more favorably than uses that incorporate all of the work (United States Copyright Office, 2022).
- District and school guidelines regarding amount or length of copyrighted materials use are rules of thumb to protect instructors (Kimmons, 2018).
- If the heart of the work was used, the use is generally viewed less favorably (United States Copyright Office, 2022).

Take time to clarify that the heart of the work represents the most memorable part of the work (Stanford Libraries, n.d.). This may be the chorus of a song or the climax of a movie.

EFFECT ON MARKET

- Uses that interfere with the copyright owner’s ability to make a profit are less likely fair uses.
- Uses that would cause harm if they became widespread are viewed less favorably (United States Copyright Office, 2022).
- Works currently available for purchase are viewed less favorably than those unavailable (if they were previously published; University System of Georgia, n.d.b).

Indicate that fair use judgements are based on aggregate findings across these and possibly other criteria (United States Copyright Office, 2022).

After describing a few ways that each criterion is examined, answer learner questions.

EXAMPLES/DISCUSSION (10-15 MINUTES)

Use examples in the copyright and fair use presentation slides 24-30 to have learners consider and discuss fair use guidelines.

Alternatively, use cases found on the [U.S. Copyright Office Fair Use Index](#) as examples (filter by education/scholarship/research; United States Copyright Office, 2022). This site provides summaries of lawsuits and their outcomes surrounding copyright in education and research settings. A few examples include:

Tresóna Multimedia vs. Burbank Highschool Music Association. A 2020 case regarding music in a school-produced compilation used for fundraising and promotions and whether it violated licensing agreements.

Morano vs. Metro. Museum of Art. A 2021 case regarding the use of a copyrighted photo that depicted a museum artifact on a publicly available website used to document the collection.

Penguin Random House vs. Colting. A 2017 case where *Kinderguides* were made to present short, sanitized versions of classic, copyrighted works for a profit.

After presenting each example, engage learners in a discussion using the fair use criteria as guidelines.

Possible questions might include:

- What was the intent/purpose for using the copyrighted materials?
 - Did the user intend to make a profit with the materials?
 - Could the user claim that their use was strictly educational?
 - Did the user transform the materials in any way by their use? Explain?
- What was the nature of the copyrighted material itself?
 - Was the material largely factual or non-fiction?
 - Was the material meant to be consumed only once (like a workbook)?
- How much of the material was used compared to the whole?
 - Was the heart of the material used?
- How did the use effect the market?
- If applicable, what could the user have done to make a better fair use claim?

FAIR USE WRAP-UP (5 MINUTES)

This section corresponds with copyright and fair use presentation slide 31.

Remind learners that a major indicator of fair use is the purpose of use and whether that transforms the use into something new (United States Copyright Office, 2022). Copying materials to avoid purchasing expenses rarely amounts to fair use (pijipvideo, 2020). However, providing a personally read audio recording of a commercially available picture book, behind a learning management system, to help learners recognize words as they read along; interspersing the read aloud with questions and/or tips to aid comprehension skills (foreshadowing, plot development); or providing opportunities for English as a Second Language Learners to hear and practice pronunciation at home as they read along may transform uses into something new and educational.

End this portion of the lesson by stating that problems with fair use guidelines include ambiguous guidelines (Kimmons, 2018). Furthermore, teachers mainly claim fair use after they are sued for possible copyright violation. Fair use guidelines give teachers the right to use copyrighted works without permission for certain uses. Yet, teachers must defend those rights.

Lastly, state there are other policies to help educators definitively know how and when they can use certain resources. This includes Creative Commons media. This media will be the focus of the second day.

LEARNING REPRESENTATION DAY 2

Day two begins with a brief lecture and discussion about Creative Commons licenses. It then transitions to an activity where learners locate different Creative Commons media and are taught how to provide attribution. In preparation for this lesson, provide a list of search tools (see list Locating CC Media section) for learners to locate Creative Commons media.

GAIN ATTENTION (3 MINUTES)

Remind learners that they have been discussing copyright principles to determine what resources can be used and shared for educational purposes. Remind them that educators can use copyrighted materials without seeking permission under certain conditions like news reporting, teaching, satire and parody, criticism, and research (United States Copyright Office, 2022). This right is known as fair use and is based primarily on four criteria:

Ask learners what the criteria are. Review as needed.

- The purpose of the use.
- The nature of the work.
- The amount used.
- The effect of the use on the market.

State these criteria align with the exclusive rights of copyright owners to reproduce the work, prepare derivatives (e.g., translations, audio/video productions, abridgements), distribute copies, or perform/display works publicly.

Remind learners that fair use claims are great for educators but open to interpretation (Kimmons, 2018). Courts of law decide whether uses constitute fair uses, making it problematic for educators.

DAY 2 OBJECTIVES (1 MINUTE)

State that learners will be introduced to an alternative policy to fair use that fully adheres with copyright laws but provides clarity about acceptable use. This policy uses Creative Commons media.

Indicate that by the end of the lesson, learners will be able to:

- Describe two ways that creative commons licenses fit within existing copyright laws.
- Identify the four basic Creative Commons licenses and describe what uses they allow.
- Recognize how Creative Commons licenses can be combined.
- Identify the least and most restrictive Creative Commons license and indicate the things that a user may do with works issued under those licenses.
- Describe how to locate and provide proper attribution for Creative Commons media.

CREATIVE COMMONS INTRO (7 MINUTES)

This section corresponds to copyright and fair use presentation slides 32-36.

Remind learners that Copyright grants the author exclusive rights to:

- reproduce the work
- prepare derivatives (e.g., translations, audio/video productions, abridgements)
- distribute copies publicly
- perform or display works publicly

Indicate that authors may want to automatically grant others certain rights to use their works to gain name recognition, advance learning, and so forth. Explain that Creative Commons licenses (also identified as CC) were developed to help authors automatically grant certain copyright permissions to users. These permissions align with the rights that copyright laws grant authors (*Frequently Asked Questions*, 2021).

State that because there are several rights, multiple Creative Commons licenses exist. License components include attribution, non-commercial, no-derivatives, and share-alike (Kimmons, 2018).

The following sub-sections describe these license components and how they can be combined.

ATTRIBUTION (BY)

Indicate that attribution (also labeled BY) is the least restrictive license. It allows users to do whatever they want with the work (e.g., sell it, make derivatives, distribute, perform) as long as they indicate who the

original author was and that they are using the work with the specified creative commons license.

Stress that all Creative Commons licenses require attribution (Creative Commons, n.d.b).

NON-COMMERCIAL (NC)

State that this component (also labeled NC) allows users to do whatever they want with the work so long as it is not used for monetization purposes or to gain commercial advantage (Creative Commons, n.d.a).

NO-DERIVATIVES (ND)

Indicate that this component (also labeled ND) allows a user to do whatever they want with the work but cannot change it in any way (e.g., remix, transform, crop, alter colors, resize). However, users may still change the media format (e.g., turn a JPG image into a PNG or PDF, add an image to a movie; *Frequently Asked Questions*, 2021).

SHARE-ALIKE (SA)

State that this component (also labeled SA) allows users to do whatever they want with a work (e.g., copy, sale, distribute, transform, remix) but they must license their new work under the same license as the original (Creative Commons, n.d.a).

MIXING LICENSES

Indicate that because license components provide different permissions, they can be combined into six different possibilities. As mentioned, all Creative Commons licenses require attribution.

Provide learners with a list of license combinations ordered from least to most restrictive and describe what they allow (see Creative Commons, n.d.a):

- CC BY (Attribution), the least restrictive license
- CC BY-SA (Attribution, Share-Alike)
- CC BY-NC (Attribution, Non-Commercial)
- CC BY-NC-SA (Attribution, Non-Commercial, Share-Alike)
- CC BY-ND (Attribution, No-Derivatives)
- CC BY-NC-ND (Attribution, Non-Commercial, No-Derivatives), the most restrictive license

Note: You cannot have a No-Derivatives Share-Alike license because you cannot make something new with no-derivatives content.

DISCUSSION (4 MINUTES)

Ask small groups of learners to determine what Creative Commons Licenses they should AVOID if placed in the following circumstances (answers in *italics*):

1. A group of teachers wants to combine the school's name and mascot with a background image suitable to print on a t-shirt to sale as a fundraiser. *Avoid non-commercial and no-derivatives licenses.*
2. A teacher wants to add an image to a slide in her presentation deck to illustrate a point. *Any Creative Commons license will do.*
3. A professor wants to use a chapter from a creative commons book as part of a course packet to be sold in the university bookstore. *Avoid non-commercial licenses.*
4. The same professor wants to remove a few paragraphs from the chapter and add a couple sentences to clarify points before selling the packet in the university bookstore. *Avoid non-commercial and no-derivatives licenses.*

LOCATING CC MEDIA (20 MINUTES)

Indicate that learners will now gain experience locating Creative Commons media. State they need to locate at least two images, one audio or video clip, and one piece of writing associated with a narrow educational topic of their choosing (e.g., photosynthesis, The U.S. Civil War, measures of central tendency, present-tense conjugations of the Spanish verbs *ser* and *estar*, the four seasons).

Have learners capture their media in an electronic document (like a [Google Sites webpage](#), word processor, or presentation program).

Note: Images are easy to find so consider having learners begin by searching for text. As they search, observe, ask questions, and provide guidance. You may have to help learners search. They may not find some relevant media. That is fine. Help them consider what is and is not available.

Below is a sample list to help learners search:

MULTIMEDIA (audio, image, video)

- [Openverse](#)
- [Pexels](#) (stock video footage)
- [Internet Archive Stock Footage](#)

MUSIC

- [ccmixter](#)
- [Bensound](#) (for some uses)

IMAGES, CLIPART, ICONS

- [Flickr Creative Commons](#)
- [Pixabay](#)
- [Pexels](#)
- [pxhere](#)
- [Unsplash](#)
- [Public Domain Images](#)
- [FreePik](#)
- [Public Domain Clipart](#)
- [Vecteezy](#) (vector images, mostly CC)

CURRICULAR MATERIALS AND TEXTBOOKS

- [CK12](#)
- [College Open Textbooks](#)
- [EdTech Books](#)
- [MIT OpenCourseware](#)
- [OER Commons](#)
- [GALILEO Open Learning Materials](#)

BOOKS AND AUDIOBOOKS

- [Project Gutenberg](#)
- [Bookdash](#) (children's PDF eBooks)
- [Librivox](#)

SHARE (4 MINUTES)

Ask a few learners to identify their topics, share what they found, and discuss any surprises as they searched for content and/or posted it to their electronic document.

PROVING ATTRIBUTION (7 MINUTES)

This section of the lesson plan aligns with copyright and fair use presentation slides 36-40.

Indicate that Creative Commons media are still copyrighted (*Frequently Asked Questions*, 2021). Thus, they must be used according to the guidelines established in the license. At a minimum, this means giving proper attribution.

State that attribution contains the following elements:

- the name of the work
- the author of the work
- a link to the original source
- a link to the author's profile
- indication of what license you are using
- a link to that license
- indication of any modifications (e.g., cropping, color change; Creative Commons, n.d.b)

Indicate that content in the public domain and on certain websites (e.g., Pixabay and Pexels) make attribution unnecessary. However, advise learners that attribution is always good practice. It helps individuals remember what use permissions they have and where the media was retrieved. Trying to Remember this information without attribution may be difficult a few days or weeks after media retrieval.

EXAMPLES

Show examples of Creative Commons attributions. I first show an example with [CK12 content](#) because the site has specific guidelines for online, print, and embedded content (see Figure 1). I also show an example from Flickr Creative Commons (see Figure 2) and from Pexels (see Figure 3).

William Stewart of Nevada guided the **Fifteenth Amendment** through the Senate. Ratified February 3, 1870, the amendment prohibited states from disenfranchising voters "on account of race, color, or previous condition of servitude." The amendment re-opened the possibility, however, that states could institute voter qualifications equally to all races and many former confederate states took advantage of this provision, instituting poll taxes, and literacy tests, among other qualifications.



LICENSED UNDER [ck-12 License](#)

© CK-12 Foundation • Visit us at [ck12.org](#)

Figure 1. Attribution of printed text from ck-12 website.



Figure 2. Attribution of cropped image from flickr.com.

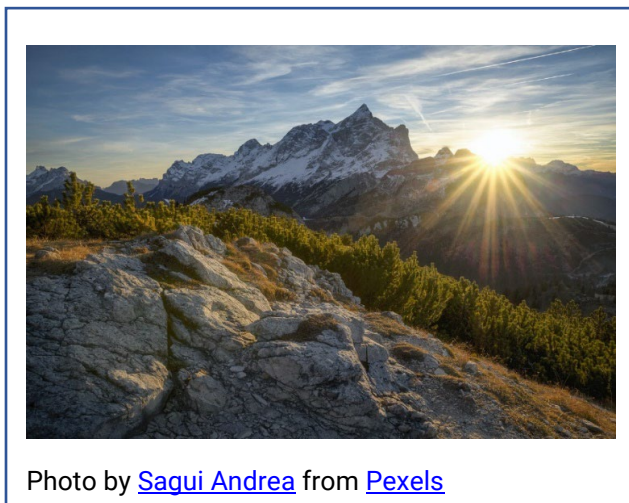


Figure 3. Attribution of image from pexels.com.

Inform learners that works from Pexels.com do not need attribution (according to the Pexels license). However, remind learners that they should provide attribution anyway, as a courtesy for the author and to remind themselves where they retrieved the source and what use permissions they have.

ASSESSMENT (6 MINUTES)

With time remaining, have learners add attribution to the media and text they found. Then have them submit their electronic document to their instructor.

I use the submitted page as participation/completion points for the day. However, I also provide feedback on their attributions, making sure they gave proper attribution based on the media source, license, and use. If desired, a quiz can be used to ascertain learner knowledge of copyright, fair use, and creative commons concepts. A sample quiz, [Copyright/Creative Commons Quiz](#), is provided.

WRAP-UP (2 MINUTES)

Conclude the lesson by indicating that copyright laws influence teacher practices on a daily basis. Most creative and original media are copyrighted under U.S. law. These laws give the authors/owners certain rights that teachers need to respect. Certainly, fair use has a place in education and is a right that teachers use as they balance defined teaching needs with author's rights. Yet, problems can arise. Creative Commons licenses seek to remedy those problems using scenarios that are easily identified.

CRITICAL REFLECTION

I have taught this lesson (or one similar to it) for over ten years. The most recent implementation occurred in February 2022. I am always reminded of preservice teachers' lack of general knowledge regarding U.S. copyright laws. They know that copyright laws exist and that these laws provide certain rights to content creators. However, they have a difficult time articulating what rights are provided and what users can and cannot do with copyrighted works. For example, learners know that they cannot make a copy of a movie, computer program, or music file and give (or sell) that copy to others while retaining the original.

They also realize that works of art and photography have protections that restrict others from making and selling copies. However, they do not know if it is okay to purchase a film and show it in class or in another public setting. They also do not know if they can search for images in a search engine and use them on presentations, websites, and print materials. They

have heard that teachers and other individuals may use copyrighted works without permission but generally cannot provide specifics or circumstances where those uses would occur. Prior to this lesson, aspects of Copyright and fair use appear to have been largely unexplored.

To help preservice teachers enter the conversation, I recently began prescribing the copyright chapter on EdTech books (Kimmons, 2018). I appreciate this resource because it is licensed through Creative Commons and allows learners to see open education resources (OER) in action. I also like the chapter because it introduces the topic from the perspective of classroom teaching, provides myriad examples of common uses, and does not focus on fear tactics to dissuade misuse.

Although the first day of this lesson predominantly follows a lecture and discussion format, the topic is interesting, relevant, and captures and maintains most learner's attention. Examples about what is copyrightable spark conversation. Learner perceptions are generally split between whether a poem scrawled on a used napkin can or cannot be granted copyright according to U.S. law. Learners also seem interested in what is not copyrightable, particularly works in the public domain. They also seem interested in fair use guidelines. However, this is where the lesson becomes more difficult.

Fair use guidelines are often vague and situation dependent. Lacking the legal training in U.S. copyright laws, it is difficult to interpret why one instance violates copyright law and another instance does not. Fortunately, many case summaries exist on the [U.S. Copyright Office Fair Use Index](#). However, there is not enough time in class to cover the many nuances of fair use policies in detail. For example, several minutes could be spent considering the nature of the work itself (e.g., whether it was fiction or non-fiction, previously published or unpublished, in-print or out-of-print, consumable in nature). Taking time to cover the purpose of use and whether it represents a transformative use could cover multiple class periods. Because fair use is not the main focus of the lesson (looking towards Creative Commons and more openly licensed content), it may receive less attention than it needs. Learners remain hesitant to assert claims when discussing examples. They identify the four main factors of fair use but lack experience to apply them. Thus, they are instructed to stay within the guidelines their future district and school sets (which may further constrain fair use

rights by providing conservative guidelines and measures).

The ambiguity regarding learner confidence with fair use may also stem from its legal origins. Ultimately, expert lawyers and judges decide what is and is not fair use. Because no one in the classroom has this background, our discussions are limited to educational guesses and speculation. This ambiguity may document a lesson limitation. Learners previously expressed a lack of knowledge regarding copyright uses. Although this lesson introduces fair use and the four factors associated with it, the lesson does little to clarify how to determine fair use claims, beyond a university-provided checklist. Additionally, learners rarely have their own classrooms to better situate these ideas.

Regardless, the ambiguity of fair use is a great segue for the lesson regarding Creative Commons content. Learners more readily grasp what can and cannot be done with the various licenses. They also have little problem providing attribution to sources located with provided search tools during class. However, challenges continue beyond the lesson. Although some learners locate and cite the prescribed number of Creative Commons images for given assignments, they need reminders about how to provide sufficient attribution. Despite providing several resources to locate Creative Commons media, many learners continue to use basic Google searches and do not consider copyright permissions without reminders. Apparently old habits are not easily broken. Alternatively, some learners equate Creative Commons content to free resources and search for the latter term as opposed to the license. This practice results in learners locating resources that may allow free download and use but often do not allow reposting on personal websites. Learners rarely check what permissions are provided with "free" content. Future implementations should probably clarify the difference between a search for "free" and "open" content.

Because of these learner practices and the need for additional reminders, I often require preservice teachers to obtain permission for all media they use in subsequent assignments throughout the course. This requirement essentially negates fair use guidelines entirely. I realize this approach is not authentic to future teaching practices. However, I use it to encourage continued exposure with open-access content.

REFERENCES

- Copyrightlaws.com (2021, November 5). *Copyright law and U.S. government works*. Retrieved February 20, 2022 from <https://www.copyrightlaws.com/copyright-laws-in-u-s-government-works/>
- Creative Commons. (n.d.a). *About CC Licenses*. <https://creativecommons.org/about/ccllicenses/>
- Creative Commons. (n.d.b). *Use & Remix*. <https://creativecommons.org/use-remix/>
- Creative Commons. (2021, November 22). *Frequently Asked Questions*. Retrieved June 21, 2022, from <https://creativecommons.org/faq/>
- Gagné, R. M., Briggs, L. J., & Wager, W. W. (1992). *Principles of instructional design* (4th ed.). Harcourt Brace College Publishers.
- Harper, G. (2022, February 7). *Copyright crash course*. University of Texas Libraries. Retrieved June 29, 2022 from <http://doi.org/10.15781/T24J09X6J>
- International Society for Technology in Education. (2017). *ISTE Standards: Educators*. Retrieved June 21, 2022, from <https://www.iste.org/standards/iste-standards-for-teachers>
- Jenkins, J. (n.d.). *Public domain Day 2022*. Center for the Study of the Public Domain. <https://web.law.duke.edu/cspd/publicdomainday/2022/>
- Kimmons, R. (2018). Copyright and open licensing. In A. Ottenbreit-Leftwich & R. Kimmons (Eds.), *The K-12 educational technology handbook*. EdTech Books. <https://edtechbooks.org/k12handbook/copyright>
- Meyer, A., Rose, D. H., & Gordon, D. (2014). *Universal design for learning: Theory and practice*. CAST Professional Publishing.
- Michela, E. (2018). Universal Design for Learning: Teacher planning for technology integration. In A. Ottenbreit-Leftwich & R. Kimmons (Eds.), *The K-12 educational technology handbook*. EdTech Books. https://edtechbooks.org/k12handbook/universal_design_for_learning
- Mishra, P., & Koehler, M. J. (2006). Technological pedagogical content knowledge: A framework for integrating technology in teacher knowledge. *Teachers College Record*, 108(6), 1017–1054, <https://doi.org/10.1111/j.1467-9620.2006.00684.x>
- pijipvideo. (2020, April 2). *Reading aloud: Fair use enables translating classroom practices into online learning* [Video]. YouTube. https://www.youtube.com/watch?v=Og0DgELI3_4
- Smaldino, S. E., Lowther, D. L., & Mims, C. (2019). *Instructional technology and media for learning* (12th ed.). Pearson.
- Smith, P. L., & Ragan, T. J. (2005). *Instructional design* (3rd ed.). Wiley.
- Smith, R. A. (2017, October 25). *Second request for reconsideration of refusal to register "Stackable Multi-Color Lamp Game"; Service Request#: 1-3074715611; Correspondence ID: 1-200FPPJ*. United States Copyright Office. <https://copyright.gov/rulings-filings/review-board/docs/stackable-multi-color-lamp-game.pdf>
- Stanford Libraries. (n.d.). *Measuring fair use: The four factors*. <https://fairuse.stanford.edu/overview/fair-use/four-factors/>
- United States Copyright Office. (2022, February). *U.S. copyright office fair use index*. Retrieved February 20, 2022 from <https://copyright.gov/fair-use/>
- United States Copyright Office. (n.d.). *What is copyright?* Copyright.gov. <https://copyright.gov/what-is-copyright/>
- United States Patent and Trademark Office. (2021, March 31). *Trademark, patent, or copyright*. Retrieved February 20, 2022 from <https://www.uspto.gov/trademarks/basics/trademark-patent-copyright>
- University System of Georgia. (n.d.a). *Copyright policy: Policy on the use of copyrighted works in education and research*. https://www.usg.edu/copyright/copyright_generally
- University System of Georgia. (n.d.b). *Introduction to the fair use checklist*. https://www.usg.edu/copyright/introduction_to_the_fair_use_checklist

ABOUT THE AUTHOR

Craig E. Shepherd is an Associate Professor of Instructional Design and Technology at the University of Memphis with research interests regarding technology use in formal and informal settings to foster knowledge acquisition and community. He can be contacted at craig.shepherd@gmail.com.