

# Soliciting and Managing Copyright Inventions and Copyright Licensing: Part 2

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## Managing Copyright Issues

United States and international copyright laws provide the legal basis for owning, licensing, and using creative works. Within the role of universities and colleges of creating, discovering, and disseminating knowledge is the opportunity to confront and resolve many copyright ownership and use issues. As individual authors, creators, and those representing institutions become more knowledgeable of copyright law, policy, and practice, more effective management of the ownership and use rights (copyright) is realized.

When thinking about the possible use of works protected by copyright, keep in mind the perspective of both the owner and the user of the material—the golden rule of copyright, What kind of respect and observance to copyright law would I want others to follow if I were the copyright owner of the material they are about to use?

## Copyright Overview

Copyright is a collection of rights provided by law (Title 17, U.S. Code, referenced by section in this document) to the authors of original works of authorship, expressed in any tangible medium of expression. Copyright ownership is vested in a work if three requirements are met:

1. *Fixation*: The work exists in a tangible medium, from which the author's expression can be read, seen, or heard, either directly or by the aid of a machine. Fixation must be more than transitory (e.g., more stationary than sandcastles on the beach or cloud drawings by airplanes in the sky).

2. *Originality*: The work owes its origin to the independent creation of the author. An author who creates a work that looks identical to another work, if created completely without reference to any other copyrighted work, would satisfy this requirement. A work does not have to be new or novel, but it simply must not be a created by copying a protected work known to the author.
3. *Minimal creativity*: The work possesses at least a modicum of creative expression. Most works meet this standard. Works that do not generally are common, everyday, and traditional forms of expression (e.g., organizing a telephone directory in alphabetical order).

## Ownership of Protected Works

A work may contain many different inter-related elements, but only the elements of the work that meet the requirements of fixation, originality, and minimal creativity receive copyright protection. For example, a novel by S.E. Hinton called *The Outsiders* quotes a poem by Robert Frost entitled, “Nothing Gold Can Stay.” S.E. Hinton’s copyright in the novel would not extend to that poem. In fact, many parts of a novel are not protected, including general ideas about life, stock characters, basic elements of plot, and so on. Only the expression (actual writings) describing those things is protected by copyright.

A second author could write a story with background similar to S.E. Hinton’s novel, involving rivaling teenagers in different social classes, without violating copyright. The second author could even give the characters similar features like letterman jackets, greased hair, and pocket knives, but the closer this author comes to using the same exact elements with the same words (expression), the closer this author is to infringing copyright. An exception to this concept is the merger doctrine, which states that certain specific expressions are not copyrightable if there are only a few ways to express one idea.

Copyright ownership begins automatically at the time the author fixes a work in a tangible medium. Thus, if a person wrote a poem on a napkin while eating lunch today, the person would own a copyright to the poem immediately upon its completion. Protection of the copyright in a court of law requires additional steps such as registration and deposit. Registration is a prerequisite for bringing an infringer to court, and timely registration provides additional benefits strongly in favor of the copyright owner.

The requirements for copyright protection and ownership have changed over the years, but previous requirements remain important. Previous requirements include publication, notice, and renewal. These requirements are important today in determining whether a work is still protected under copyright. If copyright owners of older work have not followed these requirements, their works may have entered the public domain. For more information, see the section, “Duration of Protection.”

Selling a copy of one’s copyrighted work does not result in the transfer of copyright ownership. When an author sells a copy of his or her work, the copy becomes the possession of the buyer. Though other rights of the author remain protected, the buyer may subsequently sell the copy without consulting the copyright owner. The buyer may lend, rent, or lease out the copy, unless it is a phonorecord (material object in which sounds are fixed—CDs, tapes) or computer software.

Nonprofit libraries are exempt from this rule and may lend out phonorecords and computer software for nonprofit purposes as long as notice of copyright is given. Copyright owners may also contract with buyers to limit these rights—as is common practice in software distribution with shrink-wrap and click-wrap licenses.

Copyright ownership can be shared by two authors or owned by someone other than the original author. If two or more authors create a work together with the intent to create one unitary final work, then all authors retain joint ownership. Each author must contribute something independently copyrightable, more than just ideas.

If a work is created for an employer, the employer owns the copyright. These works are denoted as works made for hire. A creative work becomes a work made for hire if it is

1. Prepared by an employee within the scope of his or her employment or
2. Specially ordered or commissioned for use as a contribution to a collection of works.

A work created within the scope of employment occurs automatically if there is no agreement to the contrary. A specially ordered or commissioned work occurs when there is a written agreement signed by both parties and applies only to the following types of works:

1. Motion pictures or other audiovisual works
2. Translations
3. Supplementary works
4. Compilations
5. Instructional texts
6. Tests
7. Answer materials for a test
8. Atlases

Universities define their own intellectual property policies with employees to clarify what creative works will be considered as works for hire. Employment contracts with professors, students, and other employees give general guidelines for what works are considered works for hire, but some final discretion often remains with the university. Textbooks and other scholarly publication, which might seem to fall under the scope of employment of a typical professor, are generally not considered as works for hire. Universities tend to retain copyright ownership if the works are made for the university, under the direction of the university, with the substantial use of university resources, or in some cases, as collaborations between members of the university community.

## Categories of Protected Works

Copyrighted works are created in many different physical mediums, requiring slightly different applications to carry out the general principles of copyright law. The U.S.

Copyright Office categorizes copyrighted works as follows:

1. Literary works (e.g., books, articles, software)
2. Musical works, including any accompanying words  
(e.g., melody and harmony embodied in any form, such as sheet music or a recording)
3. Dramatic works, including any accompanying music (e.g., play scripts, theatrical performances)
4. Pantomimes and choreographic works
5. Pictorial, graphic, and sculptural works (e.g., paintings, sculptures, photographs)
6. Motion pictures and other audiovisual works
7. Sound recordings (e.g., particular rendition of a musical work recorded as performed)
8. Architectural works (e.g., design of a building in drawings, plans, or an actual structure)

## Rights of the Copyright Owner

Section 106 grants the owner of a copyright the *exclusive right* to do and authorize others to do the following:

1. Reproduce or copy the work
2. Prepare derivative works based upon the work
3. Distribute copies of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending
4. Perform the work publicly
5. Display the work publicly
6. Perform the work publicly by means of digital audio transmission (sound recordings only)
7. Control rights of attribution and integrity (works of visual art only)

The rights of the copyright owner are limited in scope by statute. Unless one or more of the limitations (called *exemptions* in the statute) apply, a person must obtain permission from the copyright owner before exercising these rights. The copyright owner is the person or entity who owns the exclusive rights mentioned above. The copyright owner can be the author, the publisher, or another person or entity having legal ownership of one or more of the exclusive rights described above.

## Duration of Protection

Copyright protection is limited by time. Congress has changed the length of protection multiple times, leaving behind a complicated system of rules for determining the duration of works created in different time periods. There are two general rules to keep in mind:

1. Works created on or after Jan 1, 1978:
  - a. If created independently, protection extends for the life of the author plus 70 years
  - b. If created anonymously, under a pseudonym, or as a work made for hire, protection extends 95 years from publication or 120 years from creation, whichever is shorter
2. Works created before 1923 are no longer protected and are in the public domain.

Additional complications arise depending on whether the work is published, unpublished, or has been properly renewed. In all cases, copyright protection ends after the last day of the year. For more information see Sections 302-305.

## Unprotected Materials

Copyright protection does not extend to the following:

1. Works for which the copyright has expired
2. Works produced by federal government employees within the scope of their employment
3. Works clearly and explicitly donated to the public domain
4. Works that have not been fixed in a tangible form of expression (e.g., choreographic works that have not been notated or recorded, spontaneous speeches, or performances that have not been written or recorded)
5. Titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or coloring; mere listings of ingredients or contents
6. Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration
7. Works consisting entirely of information that is common property and contains no original authorship (e.g., standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources)

## Copyright Law Related to Higher Education Institutions

### Copyright Exemptions (Limitations on Exclusive Rights)

Copyright law grants several important limitations to the rights accorded copyright owners. While there are many exemptions in copyright law, the following paragraphs mention three main exemptions useful to universities: fair use, the library and archive exemption, and the face-to-face teaching exemption. To qualify for these exemptions, the requirements of each must be strictly followed, except in the case of fair use, which has no strict requirements.

### *The Fair Use Exemption: Section 107*

Section 107 grants a fair-use privilege to use copyrighted works without permission when certain conditions are met. A reasoned fair-use analysis requires consideration of four factors as explained below. These factors are difficult to consider in isolation of each other and, thus, should be explored and weighed together. A fair-use analysis is fact-driven, and each unique set of facts regarding a proposed use leads to its own reasoned conclusion.

These factors are explications of the core intent of this exemption to encourage “purposes such as criticism, comment, news reporting, teaching...scholarship, or research.” Fair-use analysis applies to all formats and mediums, including the digital environment, and applies not only to the right of reproduction but also to the rights of performance, display, adaptation, and distribution.

#### **Purpose and Character of the Use**

In analyzing fair use, courts examine the purpose and character of the use. This factor has three distinct areas of inquiry—whether copying is transformative, commercial, and in good faith.

A work that is transformative is one that is not merely superseding of the original work but “instead adds something new, with a further purpose or different character, altering the first with new...meaning...or message” (*Campbell v. Acuff-Rose Music*). The classic example of transformative use is a parody because it contains new material added to an original work and has a different purpose with a different message than the original work. If a court finds a work to be transformative, it will often find in favor of fair use for the other factors as well. For this reason, this factor is considered one of the most important factors of fair-use analysis.

If the use is for a commercial purpose, this factor may weigh against fair use. This factor is important especially in the absence of a transformative use. If a work is transformative, however, this factor may still be in favor of fair use even if it is commercial. A parody, for example, is intended for a commercial purpose but still clearly a fair use. Most usage of copyrighted works in the university environment can be characterized as nonprofit edu-

cational uses, but educational use alone does not automatically result in a finding of fair use, just as a commercial use does not always result in a finding against fair use.

Finally, fair use presupposes good faith and fair dealing. If the court perceives that the infringer's use was deliberately underhanded, it may find a way to make these factors weigh against fair use.

### **Nature of the Copyrighted Work**

A second factor examined by the court is the nature of the copyrighted work. This factor will generally weigh in favor of fair use if the work is factual in nature (technical, scientific, etc.), instead of a work involving more creative expression such as a play, poem, fictional work, photograph, painting, and so on. Fair use does not apply to some works, such as standardized tests, workbooks, and works that are meant to be consumed. The case for fair use becomes even stronger when there are only a few ways to express the ideas or facts contained in a factual work. The line between unprotected facts and ideas on the one hand and protected expression on the other is often difficult to draw. Fair use applies to unpublished works as it does to published works, but the author's right of first publication may be a factor weighing against fair use if a work is unpublished.

### **Amount and Substantiality of the Portion Used in Relation to the Copyrighted Work as a Whole**

A third factor examined by the court is the amount and substantiality of the work taken. Although there are no numerical or percentage limits, the larger the amount of a work one uses, the less likely it will be fair use. This deliberate flexibility in the statute allows each situation to be judged on its specific facts and permits the doctrine to be practical in the higher education setting.

This factor also takes into consideration the quality of the portion taken as well as the quantity. Sometimes, even if only a small amount is taken, this factor may weigh against fair use if the portion can be justly characterized as the heart of the matter. This factor and, the fourth factor, market effect, work in tandem; the more of the original work taken, in amount and substantiality, the greater the negative impact on the market for the copyrighted work.

### The Effect of the Use on the Market for or Value of the Copyrighted Work

The last factor examined by the court is the effect on the market of a copyrighted work. This factor identifies the anticipated effect of the use on the publisher's market. If the proposed use is likely to become widespread and would negatively affect the market for or value of the copyrighted work, this factor might weigh against fair use. Similar in importance to the first factor, this factor is often highly determinative of the outcome.

In defining the affected market, courts look at the current market of the infringed work, the market for derivative works, and potential future markets. Harms to any three of these markets may weigh against fair use. Though difficult to prove, showing a clear harm to the current market weighs heavily against fair use.

Harm to the current market might be inferred when the sales of the infringed work drop significantly while the sales of the infringing work increase. Harm to a market for derivative works is demonstrated when customers that would have paid for a license to adapt the original work choose not to or when sales decrease for licensed works while sales increase for infringing works. The threat of harm to potential future markets can also be persuasive regardless of whether a company has plans to exploit a new market, but the presumed market must be traditional, reasonable, or likely to be developed.

Not all harms to plaintiff's market will result in a finding against fair use. If a work causes harm by becoming a replacement for the original to fulfill the same type of purpose as the original (i.e., nontransformative) then it weighs against fair use. For example, an author who writes a book with the same characters as a Harry Potter novel has created a similar work with a similar purpose. Thus, the author is trying to gain some of the market share for Harry Potter novels and such usage would likely result in a finding against fair use.

A transformative work, such as a parody, may actually cause harm to a market by criticizing the original work of authorship. Returning to the Harry Potter example, suppose instead that the infringing author used the Harry Potter characters in a documentary film criticizing society's acceptance of magic. Even if it erodes the current market for Harry Potter books, this type of harm resulting from transformative works is less likely to weigh against fair use.

### *Weighing and Balancing the Factors*

Fair-use analysis is a flexible doctrine that Congress intended to be tested and adapted for changing needs and circumstances. The law provides no clear and direct answers about the scope of fair use or its meaning in untested and unproven situations. If most factors lean in favor of fair use, the proposed use is probably allowed; if most lean the opposite direction, the action will not fit the fair-use exemption and may require permission from the copyright owner. Reliance on a reasoned analysis and using a Checklist for Fair Use is helpful to claiming a good-faith effort.

### **Libraries and Archives Exemption: Section 108**

For libraries and archives (libraries) and their employees, Section 108 grants exemptions to the reproduction right (the right to make copies) and distribution right. This section is somewhat complex because of the difficult tension between the need for copyright protection and the need for making ideas available for educational purposes. Exemption is primarily related to the library's purpose in making a copy and the availability of the work.

The general rule is that libraries and archives may make one copy of a work and distribute it so long as (1) it is not for a commercial purpose or advantage, (2) the library is open to the public, and (3) the copy displays a copyright notice. The general rule applies primarily to literary works and specifically excludes:

1. Musical works
2. Pictorial, graphic, or sculptural works
3. Motion pictures or other audiovisual works other than an audiovisual work dealing with news

This section grants broader rights than the general rule depending on the library's purposes. The library may reproduce up to three copies of any category (including those excluded by the general rule) of work in certain cases:

1. If the work is unpublished, copying must be for *preservation, security, or for deposit for research in another library*. To fall under this exemption, the library must also own a copy of the unpublished work.
2. If the work is published, such use must be for replacement of a work that is *damaged, lost, stolen, deteriorating, or in an obsolete format*. Before copying a

published work, the library must give a reasonable effort to determine the cost of replacing the work and come to the conclusion that a new copy cannot be obtained for a fair price.

Any of these three copies may be in digital format as long as digital copies are not accessible outside the physical premises of the library.

The amount that may be copied depends on the circumstances and purposes for making a copy. If the library makes a reasonable determination that a copy cannot be obtained at a fair price, then it may copy an entire work and distribute it to a library patron. Otherwise, the library may only copy and distribute an article or similar contribution from a periodical, or a small part of any work, such as a chapter from a book. In both cases, the library must not have reason to believe the patron will use it for something other than private study, scholarship, or research.

This section grants even broader rights for a work in the last twenty years of any term of its copyright protection. Upon a reasonable determination that a work is not subject to commercial exploitation and cannot be obtained at a reasonable price, then the library may reproduce, distribute, display, or perform a work in facsimile or digital form. As with the other areas of this section, the library may exercise these rights only if its purpose is related to preservation, scholarship, or research.

Finally, most libraries provide copiers or other reproducing equipment for its patrons. A library will not be liable for copyright infringement done through the unsupervised use of such equipment by its patrons so long as the equipment displays a notice that making a copy may be subject to copyright.

### **Face-to-Face Teaching Exemption: Section 110**

Section 110 (1) gives exemption to the performance and display rights in specific circumstances applicable to universities. A student or professor can present a work protected by copyright without permission if the following criteria are met when performed or displayed:

1. During face-to-face teaching activities
2. At a nonprofit educational institution

3. In a classroom or similar place devoted to instruction
4. With a lawfully made copy of the work

Generally, a university will have little trouble meeting these four requirements, but the fourth requirement may cause problems. For example, a faculty member or student might want to use a video/film from an online source such as YouTube. This material may be an unlawful copy and such use would not be allowed under this section.

An additional way to violate the fourth requirement is when a copy is made from a DVD or other audiovisual work that is protected by digital rights management. For more information on this topic see the section, “Circumvention of Copyright Protection Systems.”

## Other Copyright Considerations

### Reducing Liability by Expediently Removing Infringing Material

Section 512 grants a university exemption from liability in its role as an online service provider for copyright infringement occurring through its computer network. This section divides network activity into three sections:

1. Transitory digital network communications
2. System caching
3. Information residing on systems or networks at direction of users

The first two types of network activity, transitory digital network communication and system caching, only involve the university because the infringing material is temporarily passing through its network. For example, students offering illegal material from their own computers to users on the Internet by means of the university’s physical network would fall under this first type of activity. A university is not liable for these transmissions assuming the material is not made available, modified, stored for a long period of time, or initiated by the university (for specifics see the statute).

A university is more likely to be liable for the third type of activity—harboring infringing materials on one of its computers. To avoid liability for this type of activity, a university must have a system for removing infringing material from its network when notified by a

copyright owner. The university must notify the U.S. Copyright Office of its designated agent to receive notices from copyright owners. Upon proper notice from a copyright owner, the university must “respond expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity.” If the notice does not meet the standards of Section 512(c) (3), then the university is not obligated to do anything.

The notice generally contains the infringer’s Internet protocol address, name of the allegedly infringing file, and a time associated with the allegedly infringing transaction. Universities respond to these notices in a variety of ways, but generally, they identify the network user and communicate with the user until the infringing material is removed.

### **Copyright Compliance with the Higher Education Opportunity Act**

On August 14, 2008, Congress signed an amendment to the Higher Education Opportunity Act requiring universities to pursue copyright polices to remain eligible for federal student financial aid programs. The university must provide an annual notice to students with the following information:

1. Notice that unauthorized distribution of copyrighted material, including unauthorized peer-to-peer file sharing, may subject the students to civil and criminal liabilities
2. Summary of the penalties for violation of federal copyright laws
3. Description of the institution’s policies with respect to unauthorized peer-to-peer file sharing including disciplinary actions that are taken against students who engage in unauthorized distribution of copyrighted materials using the institution’s information technology system

The university must certify to the U.S. secretary of education that it:

1. Has developed plans to effectively combat the unauthorized distribution of copyrighted material, including through the use of a variety of technology-based deterrents
2. Will, to the extent practicable, offer alternatives to illegal downloading or peer-to-peer distribution of intellectual property, as determined by the institution in consultation with the chief technology officer or other designated officer of the institution

Universities have responded to this amendment in a variety of ways. Many universities already have strong copyright programs in place. Some employ network software to detect illegal activity (usually targeting peer-to-peer file sharing), while others focus on education and actively pursuing Digital Millennium Copyright Act notices related to Section 512. Little information is given as to what the statute actually requires in terms of how actively a university must combat infringement and how far it should go in offering alternatives, but, at the time of this writing, administrative regulations were scheduled to be released as early as November 1, 2009, and will become effective as early as July 1, 2010.

### **Circumvention of Copyright Protection Systems**

Section 1201 prohibits the circumvention of technological measures designed to control access to a copyrighted work. Circumvention means to “descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner.” For example, a professor may violate this part of the law by creating a compilation of audiovisual clips for teaching purposes from a DVD, digitally protected by a technology called CSS. Though a professor’s usage of copyrighted works for teaching purposes might normally qualify as a fair use, Section 1201 prohibits such usage if it requires circumvention. Another popular access control is called digital rights management technology often used to control sound recordings (MP3s) purchased from online music distributors.

Access controls may differ from encoding. National Television System Committee (NTSC) and Phase Alternating Line (PAL) are simply encoding standards, while region encoding, CSS, ACSS, Apple’s Fairplay, Microsoft’s WMV, and Sony’s OpenMG are examples of access controls.

The Library of Congress, upon recommendation of the register of copyrights, has authority to make exceptions to Section 1201 through a rulemaking procedure that occurs every three years. As of this writing, the current exceptions are effective until October 27, 2009. The current exception most relevant to universities grants film and media studies professors permission to circumvent access controls, specifically for works meeting the following description:

Audiovisual works included in the educational library of a college or university's film or media studies department, when circumvention is accomplished for the purpose of making compilations of portions of those works for educational use in the classroom by media studies or film professors.

Anyone can submit comments for these rulemaking procedures. A handful of universities regularly take an active part in this procedure, and further participation from other universities would continue to help shape this area of the law. Information about the current rulemaking procedure and previous ones may be found online at the copyright register's Web site at <http://www.copyright.gov/1201/>.

## University and Campus Copyright Advisory Services

Many universities and colleges have established a central office (or at least designated an individual) to address copyright issues, provide copyright resources, and otherwise promote copyright awareness and compliance. The following is a brief overview of what Brigham Young University (BYU) has done in this regard.

### Copyright Services at BYU

The Copyright Licensing Office (CLO) exists to assist faculty, staff, and students with all aspects of copyright and licensing. The CLO works closely with the Office of the General Counsel to ensure fair and consistent compliance and interpretation of the United States Copyright Law. Specifically, the CLO provides the following services:

1. Online copyright education
2. Classroom presentations on copyright and fair use
3. Staff and department training
4. Individual consultation (appointment preferred)
5. Copyright policy review and clarification
6. Copyright law applied in collaboration with the BYU Office of General Counsel
7. Copyright registrations

## Licensing Services

The CLO can do the following to help faculty and staff with licensing issues:

1. Assist with researching the source of material
2. Identify copyright owner information
3. Request permission for use
4. Obtain and sign license agreements
5. Process payment of licensing fees
6. Offer licensing tutorial and training

The CLO maintains a repository for licensing documents. It manages actions and restrictions of licensing agreements; produces reports for renewals, residual payments, conditions, etc; and is a central source for publisher and copyright owner information.

## Copyright Tutorial

The CLO developed an online educational tool to help the campus community understand the basics of copyright. Found at [www.copyright101.byu.edu](http://www.copyright101.byu.edu), this online tutorial is designed to assist faculty, staff, and students learn what rights a copyright owner has; the legal exemptions that exist for educators, such as fair use; and case studies to analyze and solve. It is also available on CD, by request, at no charge. The tutorial was developed in three interactive modules and includes short videos, case studies, reference material, and an online game (final test). After faculty have taken the tutorial, they are encouraged to have their students also take the tutorial as part of their coursework or offer it to students for extra credit. The tutorial takes less than two hours to finish and can be completed in one sitting or in sections.

A certificate is generated upon the successful completion of the tutorial's game, which is sent directly to the professor who is using it in his or her course. When the professor receives the e-certificate, it can be assigned a pass/fail value, a specific point value, or any other value the professor prefers to use. Several faculty members have incorporated the tutorial into a section on ethics, but it can easily fit into other areas of study. A printed certificate can also be generated and picked-up at the CLO if an individual (including faculty) requests it in place of an e-certificate.

*For more information about BYU, specifically, its Creative Works Office, see the chapter “Soliciting and Managing Copyright Inventions and Copyright Licensing: Part 1 Creative Works, by Giovanni Tata, PhD, in the 3rd Edition of the AUTM Technology Transfer Practice Manual.”*

## **Obtaining Permission: Licensing Works Owned by Others**

If you are seeking permission on your own, a license should be received from the copyright owner or his or her representative and obtained in writing. Keep a copy of all permissions received and any related correspondence.

Requests for permissions should include the following information:

1. Your name, address, telephone number, e-mail, and fax number
2. Your title/position and name of your publisher, university, or other entity
3. The date of your request
4. Complete and accurate source citations for the material you are requesting permission to use
5. A precise description of the proposed use of the copyrighted material as well as when and for how long the material will be used
6. A signature line for the copyright owner including title if he or she is representing a company and the date

## **Summary**

When considering the possible use of material protected by copyright, keep in mind the golden rule of copyright, “What kind of respect and observance to copyright law would I want others to follow if I were the copyright owner of the material they are about to use?” In addition, your answers to the following questions will help you determine if permission is needed.

### **1. Is the material you are about to use protected by copyright?**

- A. Copyright protection does not last forever. For example, anything published in the United States before 1923 is in the public domain, which means it can be used without permission or the payment of any fees.

- B. Materials created and published by employees of the federal government are in the public domain and not protected by copyright.
- C. Materials clearly and explicitly donated to the public domain can be freely used without permission.
- D. Materials clearly licensed (permission given) by the copyright owner for your planned use. There are a number of Web sites, such as Creative Commons, providing such licensed uses. Most home page Web sites will include a link to *copyright information* or *use information* or similar wording; click on these links and read the permitted uses; often nonprofit educational uses are permitted.

## **2. Does your institution or related entities own the material?**

Often your institution or individuals working for your institution may own the material you are planning to use and existing policy may allow your use without seeking formal permission.

## **3. How will the material protected by copyright be used?**

Your proposed specific use of material protected by copyright will effect whether you can claim an exemption (limitation on exclusive rights) thus not needing permission. Generally, the larger proportion of the copyrighted work you use and the broader the copying and distribution of the copyrighted work, the more likely you will need to seek permission. For example, posting a complete copy of a copyrighted work on a public Web site would in most instances require permission.

Whenever your proposed use of material protected by copyright goes beyond what is allowed by exemptions (limitations on exclusive rights) contained in the U.S. Copyright Law, permission should be obtained.

## **4. Will your proposed use clearly qualify as an allowed exemption (limitation on exclusive rights), thus not needing permission?**

Refer to the previous sections under “Copyright Exemptions (Limitations on Exclusive Rights)” for information to answer this question.

### **5. Does your institution's copyright ownership and use policy provide useful guidance?**

If you do not have an institutional copyright ownership or use policy, this is a good place to start. Discuss and meet with other university personnel and begin the exciting journey of further defining and clarifying the copyright policies, procedures, and practices at your institution.