

IP-RELATED GUIDELINES FOR ONLINE COURSE DEVELOPMENT

Background

Intellectual property (IP) laws, including copyright and “related rights” laws, are quite complex and can be confusing, sometimes even for lawyers. This document is an attempt to help creators of educational content navigate through this complexity.

- **The IP System is a system** that aims to promote creativity and innovation by providing incentives to the creators (such as exclusive rights to exploit the work) while balancing this aim with the interest of the society to benefit from the creations and innovations.
- **IP laws are territorial.** What is protected in one country may not necessarily be protected in another. International agreements e.g., treaties and conventions, are means for standardizing some provisions across different territories or jurisdictions. In connection with copyright and related rights, the Philippines is a signatory to the following international agreements:
 - Berne Convention for the Protection of Literary and Artistic Works (1951)
 - International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1984)
 - Agreement on Trade-Related Aspects of Intellectual Property Rights (1994)
 - WIPO Copyright Treaty (2002)
 - WIPO Performances and Phonograms Treaty (2002)

What is copyright?

Copyright is the collection of rights of creators of literary or artistic work that basically gives them the power to decide what to do with their work and how their work may be used by others. An important fundamental principle to remember is that facts and ideas cannot have copyright; only the specific way that these are expressed may be protected by copyright.

When are literary or artistic works protected by copyright?

Literary or artistic works are protected by copyright from the moment of their creation (Sec. 172, RA 8293). Registration is **not** required.

Are there works that are not protected by copyright?

Works that belong to the **public domain** are not protected by copyright. *Public Domain* is the legal term that refers to the collection of creative works not subject to copyright. Anyone may use a work without any requirement of obtaining permission or attribution of its author if the work is in the public domain.

When is a work considered to be in the public domain?

A work is considered to be in the public domain if any of the following is true:

- The protection period for copyright has expired;
- Copyright protection cannot be applied (such as the title of a book); or
- The copyright owner has clearly disclaimed or waived his/her copyrights (for example, marking the work with a public domain notice).

Note: The non-appearance of a copyright notice on a copy of the work *does not* suggest that the work belongs to the public domain even if it is accessible on the Web or elsewhere.

How do I find out if a work is in the public domain?

To find out if a work is in the public domain, it may be crucial to know the exact year, if not the actual date, when the author died. This information as well as other relevant details may be available in the following materials and institutions:

- Bibliographic works
- Public registers
- National Library
- Collective Management Organization (CMO)
- Publisher

Note: A single product or work may consist of numerous copyrights and these rights may have different owners, as well as different protection periods. For example, in a brochure comprising text and images, the text may belong to the public domain but the images may be under copyright protection. Hence, permission from the owner would still be required for the use of such images.

Generally, under the IP Code of the Philippines, copyright and related rights protection last during the lifetime of the author and for fifty (50) years after his/her death or fifty (50) years after the death of the last surviving author, in cases of works of joint authorship.

Are there any limitations to copyright?

Yes, there are limitations to copyright. While the general rule is that a creator's work may not be used by others without the creator's consent or permission, this rule does not apply if the work is used under circumstances that are considered **fair use**. "The fair use of a copyrighted work for criticism, comment, news reporting, teaching including multiple copies for classroom use, scholarship, research, and similar purposes is not an infringement of copyright." (Sec. 185, RA 8293).

The factors considered for fair use include the following (Sec. 185, RA 8293):

- The purpose and character of the use, including whether such use is of commercial or for non-profit educational purposes;
- The nature of the copyrighted work;
- The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- The effect of the use upon the potential market for or value of the copyrighted work.

A judge will rule on the fair use of copyrighted material only after considering all factors. Some of the conditions that may be consistent or inconsistent with fair use are shown in Table 1 below. This table is provided to simply give the reader an idea of some of the points considered for each factor, based on some previous cases (mostly in the US). It should be emphasized that fair use is a defense. Only a court of law may decide on fair use after a claim of copyright infringement. It may not be safe to assume fair use even if the opinion comes from lawyers.

Table 1

Factor	Conditions Consistent with Fair Use	Conditions Inconsistent with Fair Use
1. Purpose and character of the use	Non-commercial use Transformative use (including parody, scholarship, research, education)	Commercial use Verbatim copying
2. Nature of the copyrighted work	Factual work (e.g., biographies) Published work	Fictional work (e.g., novel) Unpublished work
3. Amount and substantiality of the portion used	Only minimal amount, and does not contain the “heart of the work”	A substantial amount, or contains the “heart of the work”
4. Effect of the use on potential market for or value of copyrighted work	No negative effect on the commercial value of the copyrighted work or on the potential income of the copyright owner.	Deprives the copyright owner of some income (e.g., by undermining a new or potential market of the copyrighted work)

Note: The factors enumerated above are factors also considered for Fair Use in the US Copyright Act (<https://www.copyright.gov/title17/92chap1.html#107>)

Is using copyrighted work for educational purposes automatically considered fair use and thus legally allowed?

No, not automatically. While using copyrighted work for educational purposes is consistent with fair use under the first factor on “purpose and character of use,” the other three factors for assessing fair use listed in Table 1 must also be considered.

Distributing copyrighted material should not be a substitute for the purchase of a book or e-book by the students. Also, use just enough materials to accomplish your instructional objectives.

What are Creative Commons Licenses?

Creative Commons Licenses are public licenses created by Creative Commons that allow anyone to use copyrighted works without obtaining express permission to do so, provided the user abides by the license conditions specified by the copyright owner.

When works are under CC licenses, creators may apply the following set of conditions:

- Attribution (BY) – the user must give proper credit to the owner (the way he/she requests but not in a way of implying endorsement);
- Share Alike (SA) – the user is granted for copying, distributing, displaying, performing, and modifying the work; provided, the modified work uses the same terms upon distribution;
- Non-Commercial (NC) – the user is granted for copying, distributing, displaying, performing, and modifying the work as long as the non-commercial purpose is fulfilled; or
- No Derivatives (ND) – the user is granted for copying, distributing, displaying and performing only works considered as original copies.

Note: If the set conditions for copyrighted works will not be followed, the users must first seek prior permission from the owner.

- Combinations of the four conditions (stated above) form six types of copyright licenses namely:
 - Attribution (CC BY)
 - Attribution ShareAlike (CC BY-SA)
 - Attribution-NoDerivs (CC BY-ND)
 - Attribution-NonCommercial (CC BY-NC)
 - Attribution-NonCommercial-ShareAlike (CC BY-NC-SA)
 - Attribution-NonCommercial-NoDerivs (CC BY-NC-ND).

Can I quote from a published work such as a textbook or an academic journal?

Yes, but subject to fair use. “The making of quotations from a published work [does not constitute an infringement of copyright] if they are compatible with fair use and only to the extent justified for the purpose, including quotations from newspaper articles and periodicals in the form of press summaries: Provided, That the source and the name of the author, if appearing on the work, are mentioned;” (Sec. 184.b, RA 8293)

DO:

- Cite the source and name of the author quoted. Cite the author’s source as well, if he/she explicitly quotes another author’s work.

DON’T:

- Don't quote a substantial amount [quantity] from a copyrighted work, or even a small amount if it covers the "heart of the work" [quality] or an amount that may negatively impact its commercial value (or potential market).

Can I include links to third-party created content, such as YouTube videos, website pages, and other online material, in my online course curriculum syllabus?

Generally, it should be fine to include a link to online sites of third-party created content because this may even help drive Internet traffic to those websites. However, some care must still be taken to check the nature of the site, specific Terms of Use and possible impact on copyright. A deep link to a particular file, for example, may unfairly bypass a site's main pages and reduce its commercial potential. Additionally, make sure to avoid sites that are known to infringe on copyright.

DO:

- Check if the third-party site has Terms of Use. If it has, make sure that those terms allow such linking or embedding. In the case of YouTube, it is fine to link or embed a video. In the case of the sites below which are good sources of CC-licensed video content, it is fine to link to an entire page:
 - <https://vimeo.com/creativecommons>
 - <https://archive.org/details/movies>
 - <https://www.ted.com/>
 - <https://www.aljazeera.com/>
 - <https://academicearth.org/>

DON'T:

- Don't link to a specific element or portion of a webpage unless it is clearly permitted.
- Don't link to sites that infringe or are thought to infringe on copyrights, e.g., The PirateBay, Newzbin, Rapidshare, Sci-Hub, and Library Genesis.

Can I copy some images, music, or videos available on the Web and paste them to my presentation slides or other course materials?

Since fair use is a gray area, it would be safer to just use images, music, or videos you have created on your own; those from the public domain; or those for which explicit permission for use has been obtained, whether or not those images are available on the Web.

DO:

- Use your own created images and figures.
- Use images from the Public Domain.
- Use images having a Creative Commons License, but make sure you abide by the terms (if any) of the license. Some websites you can use to search for such images include:
 - <https://search.creativecommons.org/>
 - <https://www.scienceimage.csiro.au/> (CSIRO's Science Image)
 - <https://eol.org/> (Encyclopedia of Life)

- https://www.google.com/advanced_image_search
 - <https://openclipart.org/> (Open Clip Art Library)
 - <https://www.pexels.com/>
 - <https://stocksnap.io/>
 - <https://wellcomecollection.org/>
 - https://commons.m.wikimedia.org/wiki/Main_Page
- Use free images from Wikipedia. A large majority of Wikipedia images are free to use. To find out a particular image's license and other details, just click on the image and the information will be automatically displayed. Make sure you abide by the terms of the license.
 - Purchase the music you intend to use on your presentation.
 - Remember that social media content is entitled to copyright protection. One cannot simply "grab" a photo without express authority from the copyright owner

DON'T:

- Don't forget to attribute the source or the creator of the image file.
- Don't remove watermarks, if any.
- Don't alter or modify a copyrighted work and attach the same to your online lecture (e.g. cropping a small portion of a photo to remove or alter the watermark, or flipping the photo's visual orientation).
- Don't incorporate trademarks (brand logos or brand names) in your visual aids, unless it is necessary for classroom discussion. This is to avoid any issues on false affiliation or sponsorship, which is also punishable under the IP Code.
 - Example: Using a famous water insulation bottle's logo for a graphic depicting a student. Unless it is a class that specifically discusses issues on that specific brand, there is no need to include the logo in the visual aids.

Can I download a presentation file created by others, and modify and use it (or a portion of it) in class?

Similar to that of copying online images, it would be safer to just create your own slides or use those that are clearly licensed under Creative Commons.

DO:

- Create your own slides, or use those you have clear permission to use from the copyright owner.
- Cite the source and name of the author.

DON'T:

- Don't forget to check the website's Terms of Use before using any downloaded file.