

**Getting Out the Message
Without Getting Into Trouble:
A Primer on Copyright**

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Copyright

▶ Article I, Section 8 of the Constitution: Congress has the power to "promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

Copyright

- ▶ Copyright protects "original works of authorship" including emails, photographs, videos, blog posts, social media posts.
- ▶ In order to be protected, a work must be "fixed in a tangible medium" -- paper, canvas, clay, memory card, hard drive.
- ▶ Copyright lasts for the life of the author plus 70 years.
- ▶ Copyright holders have a number of exclusive rights, including the right to reproduce, distribute, and publicly display their works.

Copyright Ownership and UNC Charlotte

- ▶ **Governed by University Policy 315, "Copyright Policy"**
- ▶ **Faculty & EHRA employees**
 - ▶ Non-Directed or Directed Works; "exceptional University resources"
 - ▶ Mutual NERF Licenses Back
- ▶ **SHRA employees**
 - ▶ Works Made for Hire (unless otherwise agreed)
- ▶ **Independent Contractors**
 - ▶ Works Made for Hire (unless otherwise agreed)
 - ▶ Spoiler Alert: VARA Implications
- ▶ **Students**
 - ▶ Student works
 - ▶ Student-Employees

Visual Artists Rights Act of 1990 (VARA)

- ▶ **Provides for the protection of rights of certain artists (Section 106A of the Copyright Act)**
 - ▶ Right of **Attribution** - Right to claim and disclaim authorship of works
 - ▶ Right of **Integrity** - Right to prevent any intentional modification that would be harmful to author's reputation
 - ▶ Right of **Preservation** - Right to prevent destruction of a work of recognized stature
- ▶ **Applies to "works of visual arts"**
 - ▶ Paintings, drawings, prints, and sculptures in limited edition (200 or less) that are marked and numbered
 - ▶ Specifically excludes: Works made for Hire and Works otherwise excluded from Copyright protection
- ▶ **Limitations**
 - ▶ Fair Use
 - ▶ Consent (e.g. contractual language re: Rights) or Waiver
 - ▶ Notice Period
 - ▶ Rights last for the life of the author(s)

Use of Copyrighted Music by University

- ▶ **"Musical Works" and "Sound Recordings"**
- ▶ **Types of Rights:**
 - ▶ Performance Rights (on-campus performance to "music-on-hold")
 - ▶ Grand Rights (music as part of dramatic performances, e.g. plays)
 - ▶ Mechanical Rights (make copies or mechanically reproduce works)
 - ▶ Synchronization Rights (sync works with videos)
 - ▶ Jukebox Rights (license paid per jukebox rented)

**Our focus will be on Performance Rights*

Performance Rights

- ▶ Public Performance Rights include right "to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or to transmit or otherwise communicate a performance...by means of any device or process." Copyright Act Section 101
- ▶ Exceptions:
 - ▶ Face-to-Face teaching
 - ▶ Certain non-commercial activities
 - ▶ Fair Use

Performance Rights: License

- ▶ Model Licensing Agreements
 - ▶ Only cover events or functions sponsored by the University
- ▶ Include:
 - ▶ Concerts, dances, Student Union, music-on-hold, U Rec exercise classes, athletic events, Internet transmissions*
- ▶ The Major Performing Rights Organizations:
 - ▶ American Society of Composers, Authors, and Publishers (ASCAP)
 - ▶ Broadcast Music, Inc. (BMI)
 - ▶ Society of European Stage Authors & Composers (SESAC)

Fair Use

- ▶ **Four Factors:**
 - ▶ Purpose and character of the use
 - ▶ Nature of the original copyrighted work
 - ▶ Amount and substantiality of the portion used in relation to the copyrighted work as a whole
 - ▶ Effect of the use upon the potential market for or value of the original copyrighted work



Factor One: Purpose and Character

- ▶ Educational and nonprofit uses such as teaching, research, scholarship, criticism, commentary, parody, and reporting are favored under the first factor.
- ▶ Transformative uses are also treated favorably -- new purpose, different character, altering the original with a new expression, meaning, or message.



Factor Two: Nature of the Original

- ▶ Use of factual content such as nonfiction and news is more likely to be considered fair.
- ▶ Use of creative works and unpublished works is less likely to be considered fair.



Factor Three: Amount Being Used

- ▶ Use a small amount that is appropriate for a favored educational or nonprofit use.
- ▶ Both quantitative and qualitative.
- ▶ Possible to use the entire original and still be engaged in a fair use.
- ▶ This factor is rarely decisive.



Factor Four: Effect on the Market

- ▶ How significant is the effect of your use on the market for the original?
- ▶ Does the use simply replace a sale of the original copyrighted work?



Getting Permission

- ▶ Identify yourself and your institution (nonprofit, educational)
- ▶ Identify the portions of the work you want to use
- ▶ Describe your proposed use, including changes
- ▶ Describe any restrictions you'll place on the audience
- ▶ Request contact information for other rights holders
- ▶ Offer to provide attribution, and ask for preferred format

Giving Permission

- ▶ University Owned Copyrighted Works can be licensed to third parties
 - ▶ Scope of the work
 - ▶ Exclusive/Non-Exclusive
 - ▶ Sublicense
 - ▶ Fully paid, royalty-free, or royalty bearing
 - ▶ Warranties and Indemnification
 - ▶ Limitations on Use (scope, geographic, types of use, etc.)
 - ▶ Reflection on the University
 - ▶ Attribution

Example: Fundraising Video



A local animal shelter is raising money and awareness for homeless animals by making a promotional video. In the video, volunteers dance and lip sync to ABBA's "Take a Chance on Me" while holding baby animals around the shelter. **Is this a fair use?**

Fair Use Factors:

- 1) Purpose and character of the use
 - ▶ Nonprofit, educational, transformative uses favored
- 2) Nature of the original work
 - ▶ Fiction/nonfiction, published/unpublished
- 3) Amount and substantiality of portion used in relation to whole
 - ▶ Use no more than needed; don't use the heart of the work
- 4) Effect on the market for the original
 - ▶ Replacing sale of the original?

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Example: Seltzer v. Green Day



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<https://www.youtube.com/watch?v=84zXX7dsfZU>

Example: Graffiti Art on Campus

- ▶ Department Chair asks his favorite niece's boyfriend to paint graffiti art on the outside of a University building before an art expo.
- ▶ The Artist spray paints a beautiful work and the art expo goes off without a hitch
- ▶ After the event, the Department Chair goes to whitewash paint over the work and the Artist objects...
- ▶ The University creates a fundraising video using the work as the backdrop to the video and the Artist objects...


