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Copyright, Fair Use, and Open Licensing in Online Courses

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DISCLAIMER

This chapter is an overview of various models and methods regarding copyrighted content and ownership of intellectual property. The author is not a legal professional, and no part of this publication is intended to constitute legal advice.

MAKING COPIES

In the 1970s, I was a mischief-making U.S. elementary-school student who found myself often in trouble. I was sent almost daily to the principal's office, where various types of remediation and punishment were meted out for my misdeeds. I was sent there so often, in fact, that the principal grew tired of devising new and different ways for me to serve out my penance, settling eventually on just one: making copies.

Before the photocopier became common, there was the mimeograph machine. Imagine a hand-cranked metal drum that shuttles blank pieces of paper through a set of rollers, where wet, blue, foul-smelling ink is forced through a cut-out stencil onto the pages in order to make copies of an original document. I became an expert at making copies for all of the teachers in the school, cranking them out by the dozen in a tiny, windowless room, day after day.

It was easy to tell original documents apart from the copies. The originals were crisply printed, black text and lines on paper. The ink on the copies was damp, and the blue lines and letters were fuzzy because the ink bled into the paper. The smell of the ink lingered on the copies long after they had dried, too.

Contrast the messy copies from 50 years ago to the ease with which we can make exact duplicates of electronic materials today, a quick CTRL+C and CTRL+V on our keyboards allows us to copy and paste text, images, audio clips, and files with ease. One cannot tell easily any longer what versions of content are originals, which ones are copies, and where various elements even came from within an entire document or work. Indeed, there is an entire genre of "gotcha" reporting around discovering plagiarism in the written records of high school and college learners (Schaffahuser, 2021).

Why the historical narrative? Online instructors and designers hear a lot of varying and contradictory advice about copyright (Fries & Criss, 2019). And the historical shift from easy-to-distinguish copies to easy-to-create copies is just one of the

reasons why campus lawyers say little beyond "it depends" to questions about copyright (see Tobin, 2014). This chapter will outline some of the basic principles behind copyright that are shared among the laws in various countries worldwide, as well as concrete ways to work within those principles, to work around them in an ethical way, and to understand when the principles don't apply at all.

WHAT IS COPYRIGHT?

Copyright has a long history, going back to common-law rights codified in the Statute of Anne in 1710, where authors of books gained the right to make copies of their works for 21 years after they registered their works with a central authority. This right could be assigned, sold, or divided during the term of the copyright. Over time, copyright was enshrined in the laws of many countries, until today nearly every country in the world subscribes to the Berne Convention for the Protection of Literary and Artistic Works as a foundation for the various copyright laws in force in individual countries (World Intellectual Property Organization [WIPO], 2018). For the purposes of this chapter, know that copyright confers ownership rights to creative expressions that have been put into a fixed format, for a given period of time.

Let's unpack that statement. *Ownership* includes the rights to translate, make adaptations, perform, recite, broadcast, and reproduce the original work. It also includes the moral rights to claim authorship and "to object to any mutilation, deformation or other modification of, or other derogatory action in relation to, the work that would be prejudicial to the author's honor or reputation" (WIPO, 2018, Article 6bis, para. 1). The phrase *creative expressions* indicates that facts cannot be copyrighted, only original creations. *Fixed format* means one cannot copyright an idea, but once an idea has been recorded, that record may be claimed as a copyrightable thing. *For a given period of time* means that copyright does not last forever. Globally, the minimum length of copyright protection is the life of the author plus 50 years, with many countries offering broader protections (Sutton, 2016). Finally, the original requirement that works be formally registered has fallen away: any time someone creates an original work in a fixed format—a personal diary, online course lecture notes, a recording of people playing music—copyright ownership exists at the moment of creation.

That last part is important: with few exceptions (which we will examine shortly), copyright exists in all works, whether or not they have been formally registered, contain copyright statements, or display the © symbol. Thus, to make copies of things for use in online courses, assume that someone owns it, and that one needs either permission to make the copy or make a case for not needing to seek such permission.

GETTING PERMISSION TO MAKE COPIES

Those of us who design online courses and interactions routinely seek resources to incorporate into our work: we surf the web like magpies, picking up an image file here, a sound effect there, videos created by colleagues, research reports from think tanks. If it is online, we can just copy, paste, and voilá—a mashup. While it is technically possible to copy electronic materials easily, as we have seen above, ownership rights exist in materials that are in a fixed format. All of those splendid images copied directly from Google image search results? Someone owns those.

In order to copy content into online course environments—whether the copies are text, images, sound files, videos, or other media—the surest way to stay on the right side of the law is to obtain permission from the rights holder to make the copy. For example, the Columbia University (2010) library team has created a model letter for requesting copyright permission from rights holders regarding content for one's online course or materials. If the rights holder responds and agrees to the terms of the request (or they reach a modified agreement), one is free to make and use the copy under the terms of the agreement.

Permission from the rights holder is the surest way to honor the copyright of rights holders when making copies of content for online courses. Be sure to keep permission statements such as letters and email messages in the same place as the copies to which they pertain (e.g., in an "instructors only" folder in the learning management system), to act as supporting proof (Fineberg, 2009).

Asking for permission takes time and is an uncertain process: rights holders can say no, or not respond at all—in which case, one must explore other avenues that we will discuss below. To save time and effort, rights holders can give up some or all of their rights under copyright by using the terms of a license.

UNDERSTANDING LICENSES

Copyright holders can use licenses proactively to define how they want copies of their works to be used. Others who agree to the terms can copy and use the materials under the terms of the licenses. For example, most schools have negotiated broad use licenses with major copyright holders like publishers, typically through the library. Library databases include journal articles, e-books, films, music, computer software, and interactive multimedia. Also, many institutions have agreements with publishers to provide access to copyrighted supplemental materials when textbooks are adopted. Investigate whether access to copyrighted items are available under existing institutional licenses.

When we install software on computers or mobile phones, we must read through a lengthy legal agreement, and click the "I agree" button. Most people do not read every word of those end-user license agreements (EULAs): that is why copyright owners seldom turned to license agreements in the past—they were long, dense, hard-to-read thickets of legal language. Everyday people could not understand them. However, these days, any copyright owners can make use of a simplified set of licenses that are specifically designed to allow them to give up some of their rights under copyright while retaining others.

In 2002, Lawrence Lessig and the Creative Commons (2002) organization created four standardized, some-rights-reserved license categories that could be applied by creators to their works in order to allow less-restrictive uses of copies than are allowed by copyright (Table 22.1).

One can search specifically for works created under Creative Commons licenses: many search engines and content sites (e.g., Google, Flickr) have advanced-search limiters to allow searches only within Creative Commons-license content. Anyone may copy and use the content, so long as they abide by the terms of the license(s) claimed by the right owner, such as placing an attribution statement (BY license) or making copies only in non-commercial uses (NC license).

There is also a category of licenses wherein copyright owners give up all of their rights, and copies may be made freely, for whatever purposes or uses. Under the Creative Commons license scheme, this is indicated with a "CC zero" license that waives owner's copyright interests (see Creative Commons, 2019). There are other license arrangements that allow rights holders to give up some or all of their rights. For example, the creator of the operating software Linux, Linus Torvalds, freely shares the software under the open-source GNU General Public License ("Linux," 2022). By reading the terms of the open-source permissions, people can copy, use, and modify the software without needing to ask special permission.

A special category of licensed content especially appealing to online course designers and instructors is open educational resources, or OERs. According to Torres (2022), "Open Educational Resources (OERs) are free online teaching and learning materials. … Open means free to share, reuse, [and] remix. … OERs are documents and media that are freely accessible, openly licensed, [and] affordable" (para. 1). Many OERs utilize Creative Commons license combinations in order to make their use free or very low cost (see Green et al., 2018).

Table 22.1 Creative Commons License Categories

Symbol	*Description*
	Attribution (BY): Licensees may copy, distribute, display and perform the work and make derivative works based on it only if they give the author or licensor the credits in the manner specified by these.
	Noncommercial (NC): Licensees may copy, distribute, display, and perform the work and make derivative works based on it only for non-commercial purposes.
	No Derivative Works (ND): Licensees may copy, distribute, display and perform only verbatim copies of the work, not derivative based on it.
	Share-Alike (SA): Licensees may distribute derivative works only under a license identical to the license that governs the original work.

What happens, though, when it is not clear who the rights holder actually is (the usual case for images that surface in search-engine result lists), if the rights holder does not respond to permission requests, or if the rights holders explicitly want to hold onto all of their rights under copyright (the "all rights reserved" found on many items)?One can still put forward a strong case for making the copy by following the relevant copyright law for your area of the world.

MAKING COPIES UNDER FAIR USE AND FAIR DEALING

We have not yet talked about copyright laws in this chapter. That is because the law applies only when there is no existing permission or a license in place. In other words, licenses and permission trump the law. Many instructors and designers do not realize that the law is at the end of the chain of questions, not up front. This can lead to mistaken notions about what sort of copying is permitted in academic-design situations. Over the years, I have asked many campus leaders, designers, and instructors to share their understanding of copyright, especially the concept of "fair use" or "fair dealing" at the heart of copying content that was created by others. Here are some of the most common responses:

> "Everything on the internet is public and accessible to all, so I automatically have permission to copy anything, right?"
>
> "I can use anything I want because I'm an academic."
>
> "I just make sure I'm not using more than 10% of any given item."
>
> "If I don't copy more than one chapter, I'm safe."
>
> "I make copies of everything, but just for myself, as backups in case I can't get to them in the future."
>
> "I don't copy more than ten seconds of a song or audio clip."
>
> "I think we're allowed to use whatever we want, so long as we aren't charging students for it."
>
> "That's what the librarians are for. They bail me out if there's an issue about copyright."

Each of these understandings contains at least some incorrect or misguided information (Decherney, 2013), and in some cases, the instructor or staff member is liable to end up in trouble, especially the person who sees fair use as being able to "use anything I want."

Perhaps more insidious is the "10 percent" rule of thumb—a commonly-held idea about the limits of fair use under copyright—which does not actually appear anywhere in copyright laws and may be more or less restrictive than given situations warrant. What is needed is a simple test for use cases, one that keeps us on the "right side" of copyright fair use or fair dealing in most situations.

The idea of fair use or fair dealing has a long history. To understand how it works today, we can start with a story about priests and professors in the 1700s. In the United Kingdom, the case of "Gyles v. Wilcox (1740)" (2022) established a doctrine of "fair abridgement," allowing for booksellers, clergy, and academics to quote extensively from existing books for their own purposes. Soon afterward, James Madison and other founding fathers of the United States drafted the first Copyright Act in 1790 to apply to the then-new country (see Association of Research Libraries, n.d.). It protected the intellectual property of creators and provided an exception for certain types of people to make copies without having to ask permission: this is the "priests and professors" of our story. Canada followed British law until it passed its own Copyright Act in 1921 (Copyright Act, 1985). It, too, allowed for certain classes of people to exercise the right of fair dealing—the right to make copies for limited purposes without having to ask permission of the owners of the materials. In most countries that had copyright laws, fair use, fair dealing, and other exceptions to copyright were nearly absolute, and were based on people's roles.

That is how it worked for a very long time. If an American minister, in 1793, read an article by Benjamin Franklin in the *Pennsylvania Gazette* and wished to copy the article and give the copies to his congregation as support for a sermon, he had the right to do so without having to ask anyone's permission. It was considered a "fair use." If a professor at Harvard University in 1803 wished to make copies of a book and give those copies to his students, he had the right to do so, without having to ask anyone's permission. It was considered a "fair use."

It was not until the mid-1800s in the United States and the early 1920s across the British commonwealth that the privilege of "fair use" and "fair dealing" was extended beyond priests and professors to most people who wanted to make copies.

The changes that took place still limited the circumstances under which people could make copies without having to get permission: mostly for teaching, research, criticism, and reporting. One important note: the terms *fair use* and *fair dealing* refer to slightly different sets of rights and practices in the U.S., Canada, the former British Commonwealth, and other countries worldwide, but the distinctions among them are very small, so we can treat them as rough equivalents.

Today, though, the copyright laws in the United States, Canada, and countries that abide by the World Intellectual Property Organization (WIPO) Copyright Treaty no longer define fair use or fair dealing as an automatic right. Initially, fair use was understood to be a right that people could exercise, as we have seen in the "priests and professors" story above. Instead, today we have to *build a case* for fair use—and that case can be a strong one, a weak one, or something in between. As cited in Ghosh et al. (2007), "The 1976 revision of the [U.S.] Copyright Act … change[d] the original nature and function of fair use. It treats fair use as a defense, rather than as an affirmative right of use" (p. 174).

Fortunately, building a solid defense to argue that a given use of copyrighted content is a "fair use" is relatively straightforward. Each question of fair use must be determined on a case-by-case basis. In fact, the *Report on Copyright* from the U.S. House of Representatives from 1976 contains these heartening words:

> Although the courts have considered and ruled upon the fair use doctrine over and over again, no real definition of the concept has ever emerged. Indeed, since the doctrine is an equitable rule of reason, no generally applicable definition is possible, and each case raising the question must be decided on its own facts. (HR 94-1476, 1976, p. 65)

Even the people who wrote the law on fair use in the U.S. do not have a definition for it! And the case is similar throughout the rest of the world. So, what are we poor instructors and online course designers to do?

In the United States, the fair-use exception for scholarly purposes (Copyright Law of the United States, 1976) broadly outlines how instructors and designers can copy and use copyrighted materials. There is even a separate section of the law that allows instructors to show entire works (e.g., screen a whole movie, show an entire painting) in the classroom—but not via distance-education (Copyright Law of the United States, 1976). The language in the fair-use section of the law is notoriously open to interpretation. In order to allow us to make informed decisions about fair use, we can arrange the criteria listed in the copyright law to form the mnemonic PANE:

- **Purpose**: Is the copying done for "criticism, comment, news reporting, teaching, scholarship, or research"?
- **Amount**: How much of the whole item is being copied? Prefer to copy a representative sample rather than an entire item.
- **Nature of the Work**: Is the content more factual or creative? Is it being copied for a one-time purpose or to be used repeatedly?
- **Economic Impact**: Will copying of the material deprive the owner of revenue or profits?

For colleagues in Canada and many former British Commonwealth countries, the same four criteria apply, plus two more: *Character* and *Alternatives* (think "PANE" + "CA") for fair dealing (Canada Code RSC c. C-42.29):

- **Character of the dealing**: Are few or many copies produced? Will the copies be destroyed after use?
- **Alternatives**: Is a non-copyrighted equivalent available?

Worldwide readers can apply the three-part test under the Berne Convention, which "permit[s] the reproduction of copyrighted works a) in certain special cases, provided that b) such reproduction does not conflict with a normal exploitation of the work and c) does not unreasonably prejudice the legitimate interests of the author" (Electronic Frontier Foundation, n.d., para. 4). If these Berne three-part test criteria sound very general, that is correct. These criteria govern the international treaty about what can and cannot be included in individual countries' copyright laws (Berne, 2022). For example, both the United States and Canada are signatories, so their own specific copyright laws fall under the general stipulations of the Berne Convention criteria. Although global copyright laws differ significantly, most countries include a concept like fair use or fair dealing in their laws. We will examine the PANE+CA criteria below as a general overview of the most common criteria in fair use and fair dealing laws worldwide.

Each of the PANE or PANE+CA criteria can be assessed according to proposed uses of copies of copyrighted works. Those copying scenarios that apply strongly to all criteria will be most

defensible as fair uses of copyrighted works in academic settings. The criteria are like sliders—one can make a strong case, a neutral case, or a weak case on each of the criteria.

Purpose is the easiest of the PANE criteria to meet. Instructors who wish to copy works for their online courses are almost automatically using the desired item for "criticism, comment, news reporting, teaching, scholarship, or research" (17 US Code § 110). A note of caution for this criterion, however: using copyrighted works as decorations (even in course-related documents) or to support advertising purposes (e.g., using a copyrighted image on a flyer advertising a lecture) tends to fall outside of the scope of fair use.

Amount is also an easy-to-determine criterion. Determine the scope of the whole work that is owned by a creator: a book chapter can be considered a whole work if other chapters are written by other authors, for example. Then, use a token or representative sample of the work. This is where the ubiquitous "10 percent" guideline can get one into trouble, in both directions. Ten percent of a poem or song might not be enough to help make a point about it in class. Use more than 10 percent, but still not the whole thing. Ten percent of a book might be able to stand on its own as an entire logical argument from an author. Quote judiciously. Although a *representative amount* seems like a nebulous criterion, this is the one part of fair use that is most defensible according to the needs of the designer or instructor claiming fair use of a work.

Nature of the Work is the criterion for which many of us may not be able to make a strong case for fair use. The example from past generations is the never-changing prof-pack of photocopied articles. That has now been replaced by the tale of the online course environment in which the instructor uploads a copy of the same video clip from a 2013 *Saturday Night Live* skit semester after semester, even though the cultural references in the example are starting to feel dated. The "nature of the work" criterion has two tests built into it: copying is more defensible for content that is itself primarily factual—using an economic report or a documentary film clip is more defensible than copying a critical essay or a popular song. The other part of the criterion is whether the content has already been published. Is one, in essence, circumventing an owner's right to publish content first? Thus, a stronger argument is made for things that are already available to the public ("published" in the broadest sense).

Economic Impact is typically simple to determine. If an instructor is providing a copy of the work to help students to avoid paying for it, then this criterion is failed. For example, an online computer science instructor might mail CD-ROMs to students containing needed programs, so that the students need not purchase their own copies. Even charging the students for the cost of materials and copying still shades away from fair use; when in doubt about economic impact, err on the side of caution. A second example is illustrative here. Including a photocopied poem in a "prof-pack" every semester is likely not going to deprive the poet or publisher of economic gain. Nor is creating a PDF scan of a poem to distribute to a class one time via the learning management system. However, creating a PDF scan of a poem to avoid students having to buy the entire book in which it appears would likely fail the economic impact criterion.

Character of the Dealing (Canada/former Commonwealth only) is, in some ways, an extension of the Nature of the Work criterion above. Fair dealing is supported when the copying is done in as limited a fashion as possible (e.g., making a copy to be distributed only to students in an online course versus making a copy available to everyone who logs into an institution's online system), and for as limited a time as possible (e.g., providing copies of a music file that will automatically "lock" or "expire" after a set period of time). Library staff are usually good at advising how to do this.

If there are non-copyrighted or less restrictive **Alternatives to the Dealing** (Canada/former Commonwealth only), then the case for making a fair-dealing copy of the copyrighted work is poorer. Think not only of access to exact copies of the work, here, too. In projects such as the Open Library (https://openlibrary.org/), public domain copies exist of many texts that are held under copyright in other formats.

In sum, when making copies of content for inclusion or modification as part of online courses or interactions, remember that *licenses and permission trump the law*. If a license exists or permission is obtained to make the copy, abide by the terms of the license or permission—copyright law does not enter the conversation. License terms can uphold, negate, or modify the terms of otherwise applicable laws. Permission from the rights holder overrides all other agreements, even licenses. Also remember that the law is what applies when there are no other custom agreements in place: that is when to apply the fair-use or fair-dealing criteria to copying scenarios in order to build the strongest case for making desired copies. If a strong case cannot be built, reconsider making that copy.

WAIT. DID YOU MAKE A COPY?

Before we close this chapter, there is one important question yet to be asked, and it rests on an expanded definition of what copies are. Copies are intentional reproductions of all or part of original works, where the copies are located in a different place than the original works. One of the key copyright differences between digital and physical-format works is that digital works can often be consumed remotely without having to make permanent copies, while works on physical media need to be copied in order to be consumed. Think of a paper book: in order to read it, one needs to obtain a physical copy of it.

Now, think of the same content in e-book format: one could download a copy to one's tablet device in order to read it, or one could go online and read the text directly from a website that contains the entire text. The website version requires that one's computer make a temporary copy of the text, but those unintentional temporary-cache copies do not *count* as copies under copyright laws (Anderson, 2008).

Likewise, it is possible to embed a streaming video from, say, YouTube, into a learning management system (LMS) webpage so that the video plays in the webpage without the video file itself being copied onto to the LMS server. It is possible to serve up all kinds of content—still images, audio recordings, videos, text, interactive simulations—from their original internet locations. So long as their connections remain stable, students viewing an online course page will have a difficult time telling which pieces of content are hosted on the institution's computer servers and which pieces of content are passing through to them via streaming or embedding.

Thus, the first question that online instructors and designers must ask—before we start to apply fair-use or fair-dealing criteria, before we investigate whether there are license agreements, and before we request permission from copyright holders—is this:

> Have I actually made a copy?

In other words, is there a separate, intentionally downloaded file that now resides in a different place from the original digital work—like on a hard drive, on an institutional server, or on a portable drive? If the answer is no, then copyright does not apply. Period. Future copyright law may one day close this gap, but today, if no copy has been made, then one may use a work in its entirety, for as many terms, quarters, or semesters as one likes, for whatever reasons, without needing a license or permission or anything. Just point people to the place where the file is publicly accessible. There are currently two ways of giving our online course participants access to materials where copyright does not apply at all:

- **Hyperlinking**: Give the web address for a resource. So long as the web address is accessible in a public way (i.e., there is no need for a user name or password to get to it), it is okay to link online participants directly to needed resources. This is true even when resources contain *do not link* notices—those have been tested in courts around the world and found to lack legal standing (Anderson, 2008).
- **Embedding**: Many multimedia resources (e.g., YouTube, Vimeo, SoundCloud) have an embed code feature that displays a short snippet of computer code that one can copy into online course or LMS webpages. Once this code is part of a webpage, one has copied only the media player application (to which the owner provides a license). This allows webpage users to click on the player and stream the target media file directly from its source. No permanent copies are ever made of the media files. This is called *pass through playback* (Von Lohmann, 2007).

Make sure to document any use of the pass through method. In fact, it is a good practice to place attributions within course materials to show which items are being embedded or streamed from other locations. Attributions also help in case the streaming or embedded code malfunctions: citations can link learners to the original locations of the content items, so they can consume them directly from the sources.

A word of caution: courts in different parts of the world are currently hearing arguments that certain kinds of hyperlinking and embedding could indeed be copyright violations (Ginsburg & Budiarjo, 2018), such as *deep linking*, where links bypass home pages and point directly to sub-pages of sites (Rocha, 2020). The stance on hyperlinking and embedding is slightly different in different countries and regions, and is evolving to set aside fewer exceptions, especially for embedding (see Palmierei, 2022). While the rule of thumb above about hyperlinking and embedding will keep most readers on the right side of things most of the time, it is always a good practice to check the policies, permissions, and license terms of web resources to see what sorts

of copying they expressly condone or permit (see Dettmar, 2019).

For links and embedded content, a word is also necessary that goes beyond the law into the realm of ethical behavior. When linking to or embedding content, we are obliged to ensure that the content is being shared by its owner or by someone who is using the content in an ethical manner. Knowingly linking to unauthorized internet copies of original works, while perhaps technically legal, fails the "sniff test." This does not mean that we cannot link to or embed content from people who are not the copyright holders, just that we should make a good faith determination about whether desired content has itself been copied and shared ethically.

Hyperlinking and embedding have a complex ethical context, and it is worth exploring for a bit. There are many arguments for providing access to materials that do not require learners to pay for them separately (see Open Educational Resources above). On the other side of things, when instructors and designer have privileged access to content because of our roles at our colleges and universities (such as through library database licenses for which our institutions pay), we have an obligation to abide by the terms of the licenses and permissions that surround those copies.

Imagine, for instance, designers tasked with updating the online materials for a course that was originally developed by colleagues. In the course environment, most of the readings and supplementary materials from the colleagues are uploads in PDF format, and it isn't always clear where the files came from. The colleagues reveal that they were working from their folder of photocopies of news items, journal articles, and opinion pieces from the past several years, collected from online sources as well as physical ones. Although this might be an opportunity to throw up one's hands, the designers take the files to their librarians, and together they discover that most of the files represent either content that is online in publicly accessible places or materials that fall under the library's license agreements. As the designers begin the course updates, they start hyperlinking directly or pointing learners to the right databases in the library.

CONCLUSION: A COPYRIGHT DECISION WORKFLOW

Caveat emptor is a Latin phrase that means "let the buyer beware." It is easier to download all of the materials that we would like to use in our online teaching and then upload those copies to our learning environments. The files are always there, and we do not have to worry about "link rot"—files being removed, put in new places, or modified—as we do when we link to or embed resources that are hosted elsewhere.

While it is easier to just copy everything, it is more ethical in most cases to hyperlink or embed: our learners will visit the online locations where the resources can actually be found, a practice that allows them to echo what researchers and practitioners would do in finding and contextualizing the materials. Students will benefit from using the interfaces and tools that practitioners in our fields actually use. The price to pay is reviewing for broken links before each offering of our courses; fortunately, link-checking software can help to automate that task. There is also a silver lining to this gray cloud: we can still download copies of materials as archival copies, just in case. It is only when we start sharing them with others that we get out beyond the usual license terms or our fair-use copying arguments.

The general strategies shared in this chapter for making decisions about licenses, permission, and when and how to apply the fair-use or fair-dealing provisions of copyright law are definitely not the final word in our decision-making processes. They are intended to cover the majority of situations, and to allow online instructors and designers to make confident judgments about content copying "when the lawyer is not looking." Where the application of these strategies fails, or produces ambiguous results, it is always best to err on the side of caution, either by requesting permission from the copyright holder or by consulting legal counsel for clarification.

However, the majority of situations where we wish to copy and use content created by others do not require calls to our campus lawyers. We can use some simple guidelines to honor our desire to share content with our learners in ways that are fair to the copyright holders and fair to us, too. Figure 22.1 provides a one-page copyright flow chart to use as a quick reference, and readers can dive deeper into copyright via the *Copyright for Educators and Librarians* open access course (Smith et al., 2018) and the open access *Journal of Copyright in Education and Librarianship* (Taylor et al., 2016).

Figure 22.1 The one-page copyright decision flow chart

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