

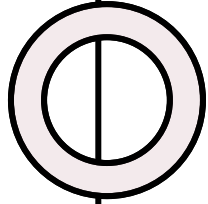


COPYRIGHT, PUBLIC DOMAIN, AND FAIR USE

*WHAT EVERY EDUCATOR
SHOULD KNOW*



[Copyright, Public Domain, and Fair Use: What Every Educator Should Know](#),
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Agenda for this training

Copyright: What is its purpose?

What you can and cannot copyright.

Copyright and other methods of protecting intellectual property: How do they relate?

How do you receive copyright protection for your work?

What is the public domain?

Copyright exemptions: fair use/fair dealing



The Purpose of Copyright slide 1



It's likely we have all heard of copyright and realize it gives someone or some organization legal control over a creative work, but there is really a lot more to it.



As educators, we often want or need to make use of resources in the classroom and online learning environment that may be subject to copyright.



It is imperative we understand what copyright is, the purpose it serves, what can and cannot be copyrighted, what other resources might be available to us, and exemptions to copyright that can benefit us as educators.



○ The Purpose of Copyright slide 2

- Interestingly, copyright law has been with us a very long time!
- The **Statute of Anne**, enacted in England in 1710, is generally considered the most important early copyright law.
- Though lenient in comparison to the standards of many nations today (as we will see), it "gave book publishers fourteen years of legal protection from the copying of their books by others" (Creative Commons Organization 17).



○ The Purpose of Copyright slide 3

- The statute was "An act for the encouragement of learning, by vesting the copies of printed books in the authors or purchasers of such copies during the times therein mentioned" (The Avalon Project).



Image courtesy British Government, [Statute of anne](#), marked as public domain, more details on [Wikimedia Commons](#)



○ The Purpose of Copyright slide 4

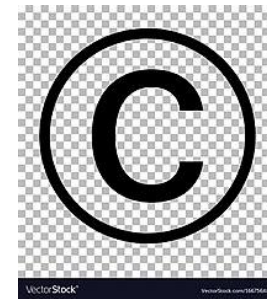
- Copyright law has changed and expanded greatly since the Statute of Anne.
- At their most basic levels, copyright laws limit "how others may use the original works of authors (or creators...) works (Creative Commons Organization 15).
- While each country has its own copyright laws, as a result of widely (if not universally) accepted treaties, there are certain commonalities of such laws (Creative Commons Organization 15).





The Purpose of Copyright slide 5

- The commonalities of most copyright laws around the world include:
 1. Copyright grants a set of exclusive rights to creators, giving them the ability to control the use of their work by others and an incentive to create new works.
 2. Copyright does not protect facts or ideas themselves, only the expression of those facts or ideas.
 3. Copyright is automatic the moment a work is fixed in a tangible medium.
 4. Copyright law lasts a long time. This differs by country but as we will see most are much longer than the 14 years protection given under the Statute of Anne (Creative Commons Organization 15 – 17).



An example of the copyright symbol so familiar today. Image courtesy [VinataNoName`](#), [Copyright-symbol-on-transparent-background-vector-16675648 \(1\)](#), [CC BY-SA 4.0](#)

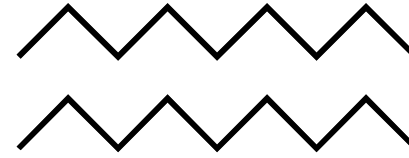




The Purpose of Copyright slide 6

- Again emphasizing that copyright laws differ country to country, there are nevertheless two overarching rationales that tend to guide copyright laws:
- **Utilitarian**- this is the rationale that seeks to encourage creators to produce new works by providing an incentive.
- **Author's rights**- this rationale is focused on ensuring the creator is attributed, or recognized, and the integrity of the work is protected. This rationale recognizes and protects the "deep connection that authors have with their creative works" (Creative Commons Organization 17).

The Purpose of Copyright slide 7



- Closely aligned with the **author's rights rationale** for copyright are **moral rights** that most countries recognize. While there are variations, the two very common types of moral rights are:
 1. **Right to be recognized as the author** (aka right to paternity). As educators, it is important to remember that when a student commits **plagiarism**, they have violated this moral right!
 2. **Right to protect the work's integrity**, essentially a right to object to distortion or undesired changes in a work (Creative Commons Organization 18).



Plagiarism violates the right to be recognized as the author rationale.

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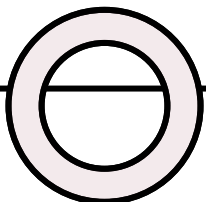
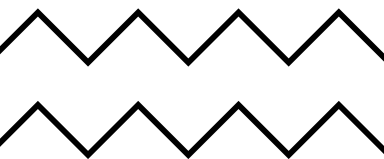
What You Can and Cannot Copyright slide 1



- **Original authorship** is required for one to copyright a work.
- To be considered **a work of original authorship**, the work must be:
 1. "Unique and not a copy of someone else's work" and...
 2. Fixed "in a tangible medium" (Creative Commons Organization 18).

Image courtesy [George Goodwin Kilburne](#) artist QS:P170,Q5539797, [George Goodwin Kilburne - Penning A Letter](#), Image has been cropped into a circle focusing on the writer, by [Drstew82](#), [CC0 1.0](#)

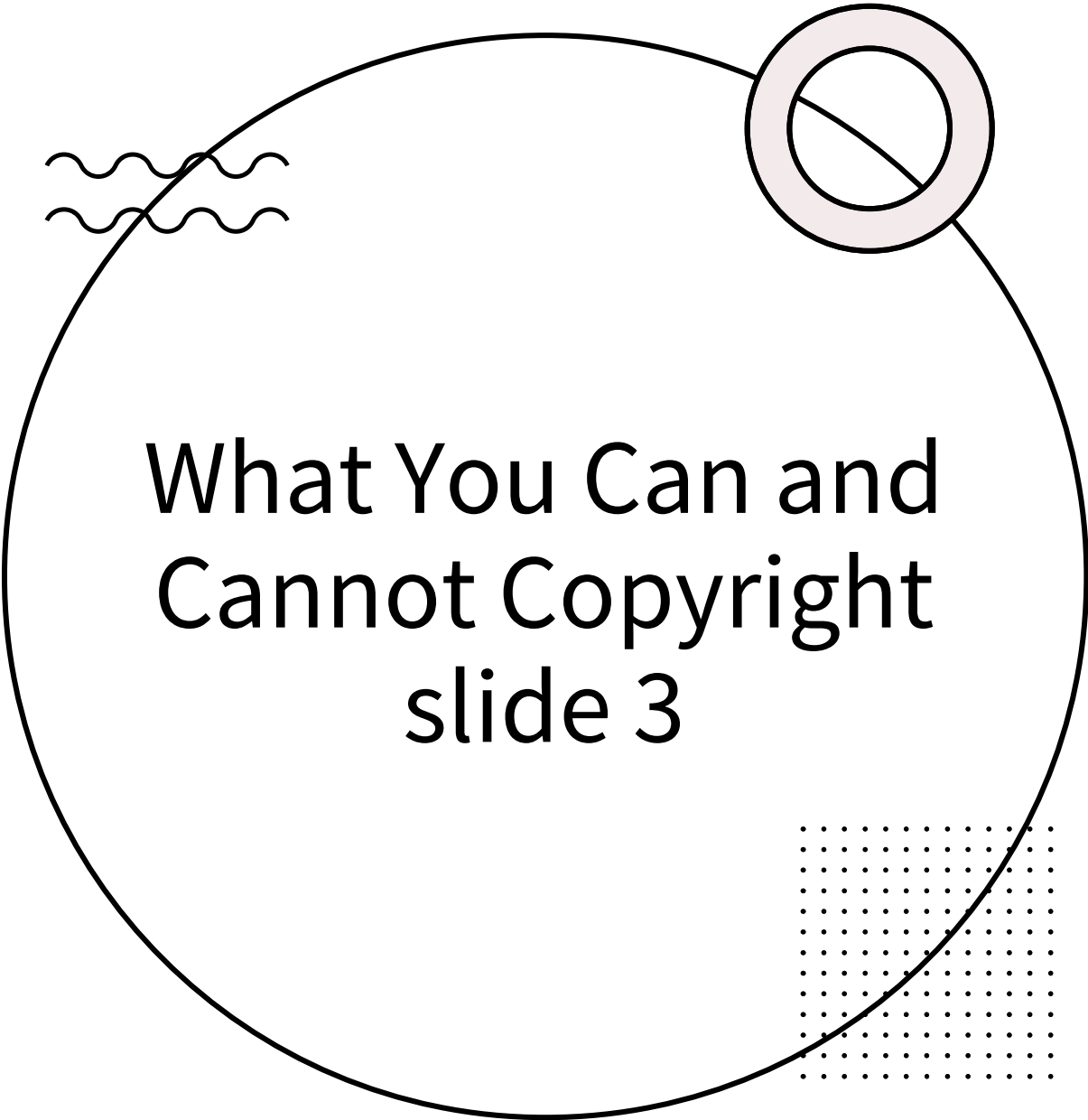




What You Can and Cannot Copyright slide 2


- It might be useful to consider a common definition of tangible. According to Merriam Webster, tangible can mean "capable of being perceived especially by the sense of touch."
- Fixed in a tangible medium can mean many things that include but are not limited to:
 1. Written down
 2. Recorded
 3. Saved to your computer
 4. Painted
 5. Drawn
 6. Photographed
 7. And more.... Hopefully, you get the idea!





What You Can and Cannot Copyright slide 3

- The following are general categories of works that copyright law applies to in most countries that have signed one of the major copyright treaties:
 1. Literary, musical, artistic and dramatic works.
 2. Translations, adaptations, arrangements, and alterations of literary, artistic, and musical works.
 3. Collections of literary and artistic works.
 4. In some countries, applied art and industrial design models as well as computer software (Creative Commons Organization 18 – 19).



What You Can and Cannot Copyright slide 4

- Creators of copyrighted works have exclusive rights over how others may use their works in several ways, some typical examples of which include:
 1. Making copies of their works.
 2. Publicly performing, communicating, or broadcasting their works.
 3. Making adaptations (to include translations) and arrangements of their works (Creative Commons Organization 19).

○ What You Can and Cannot Copyright slide 5

- So by this point, we should have a pretty good idea of the sorts of things that can be copyrighted, but **what cannot be copyrighted?**
- Recall the second of the commonalities of global copyright laws discussed earlier: "**Copyright does not protect facts or ideas themselves, only the expression of those facts or ideas**" (Creative Commons Organization 16).
- This aligns closely with the third of the commonalities of global copyright laws: "copyright is automatic the moment a work is **fixed in a tangible medium**" (Creative Commons Organization 16).
- Simply put, if you have an idea for a story but you have not put it in a tangible medium, and someone later publishes a very similar story, you cannot claim copyright infringement. However, if you put it in writing and have a **tangible record**, you **may be able** to make such a claim. Of course, this should not be considered legal advice, and any such claim would be a matter for the courts.



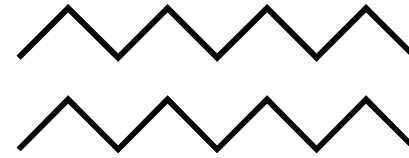
○ What You Can and Cannot Copyright slide 6

- One additional area of consideration involves **adaptations** or **derivative works**.
- These terms, which are generally interchangeable, refer to new works that are based on a preexisting work.
- For such a work to be copyrightable, it must manifest a sufficient level of new creativity.
- For example, translating a novel from one language to another or creating a screenplay of it might be a sufficient level of new creativity (Creative Commons Organization 20).



What You Can and Cannot Copyright slide 7


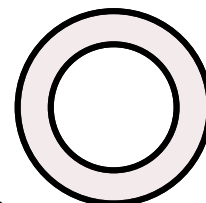
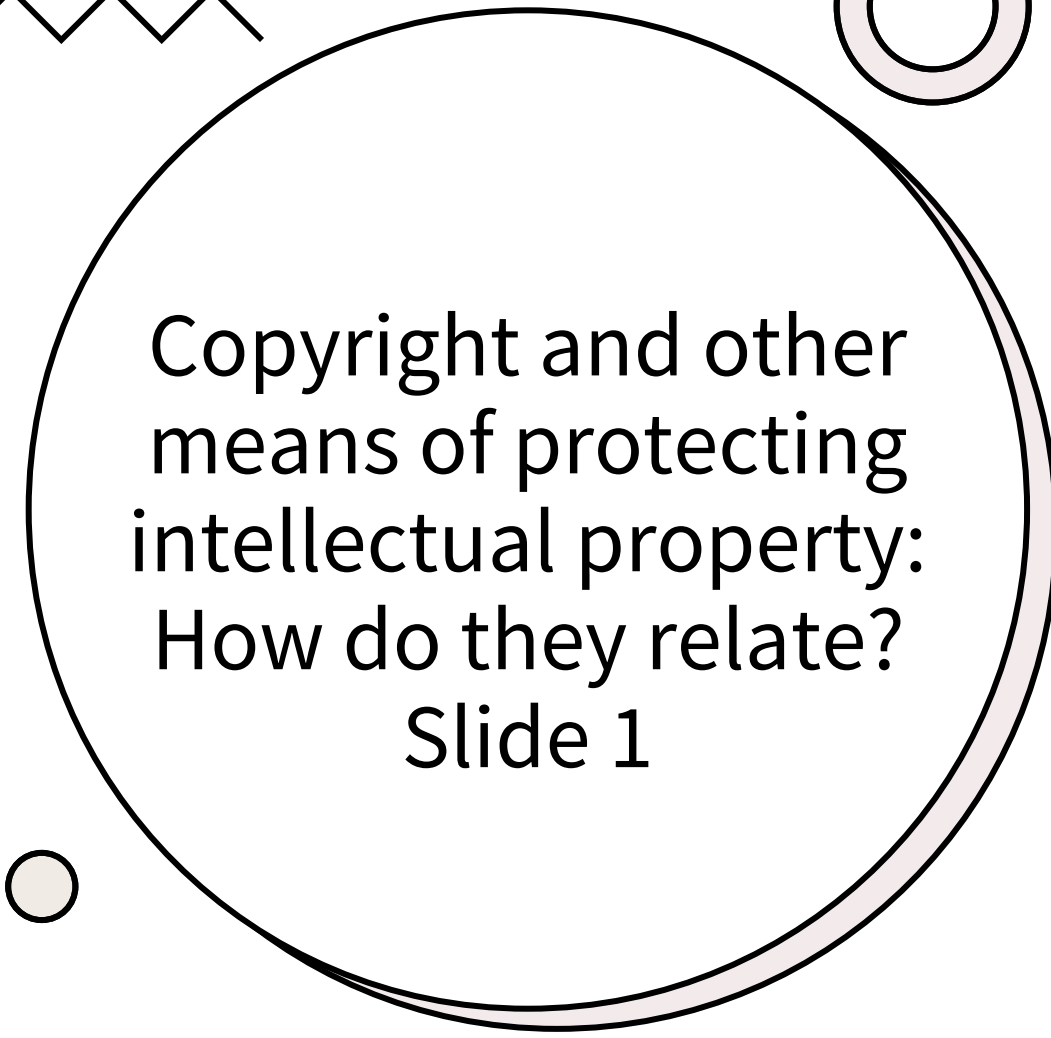
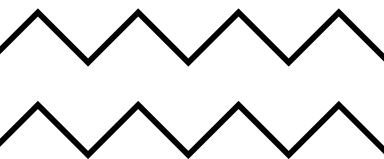
- In a **derivative work**, "the original author retains all copyright" over the original material on which the adaption is based.
- The adapter, however, can **copyright the new elements** in the derivative work.
- For example, in a screenplay based on a novel, added scenes and dialogue might be copyrightable.



Adapting a novel to a screenplay is a typical example of a derivative work.

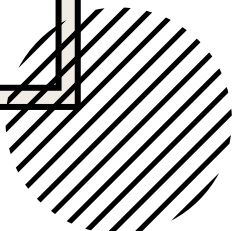
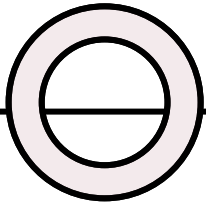

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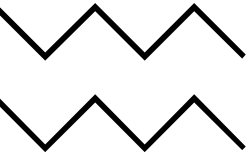
Copyright and other
means of protecting
intellectual property:
How do they relate?
Slide 1

- **The World Intellectual Property Organization, or WIPO**, is one of several international organizations that serve as forums for the formulation and global harmonization of copyright laws and treaties (Creative Commons Organization 24).
 - According to the WIPO, "**Intellectual property (IP)** refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce" (About IP).
- 



Copyright and other means of protecting intellectual property: How do they relate? Slide 2

- Based on the definition of IP provided by the WIPO, **copyright** is one type of intellectual property, but there are others hinted at in the definition:
 1. **Trademark laws** which help **protect** both the **producers of** goods and services and **the public**.
 2. **Patent laws** "which give inventors a time-limited monopoly to their inventions" (Creative Commons Organization).




Copyright and other means of protecting intellectual property: How do they relate?

Slide 3

Trademark	Trademark laws:
Protect	Protect the public from confusion about the source of a good, service or establishment.
Protect	Protect the holder from use of the use of their trademark by others that may confuse the public.
Protect	Protect the reputation of the producers of goods and services.
Give	Give the public simple ways to differentiate between similar products and services (Creative Commons Organization).





Copyright and other means
of protecting intellectual property: How
do they relate?
Slide 4

- The "golden arches" of the MacDonal'd's fast-food restaurant chain are a good example of a well-known trademark.
- One might argue that, from the prospective of businesses and organizations, trademark laws address both the utilitarian and author's rights rationale. They help protect the firm's potential for profit and reputation!



Photo of McDonalds courtesy
[Willis Lam](#), [McDonald's at
Laurelwood Shopping Center
\(14753514797\)](#), [CC BY-SA 2.0](#)



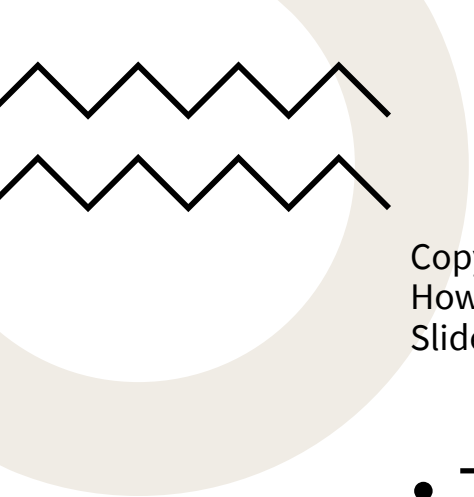


Copyright and other means of protecting intellectual property: How do they relate?

Slide 5

- **Patent laws** give inventors:
 1. A time-limited monopoly on their inventions.
 2. Exclusive rights to make, have made, use, have used, offer for sale, sell, have sold, or import patentable inventions (Creative Commons Organization 22).
- Like copyright and trademark laws, it is worthwhile to consider how patents might also address both the **utilitarian** and **author's rights** rationale! After all, an inventor may wish to profit from his or her work and is likely to have taken some pride in the inventions they produce!

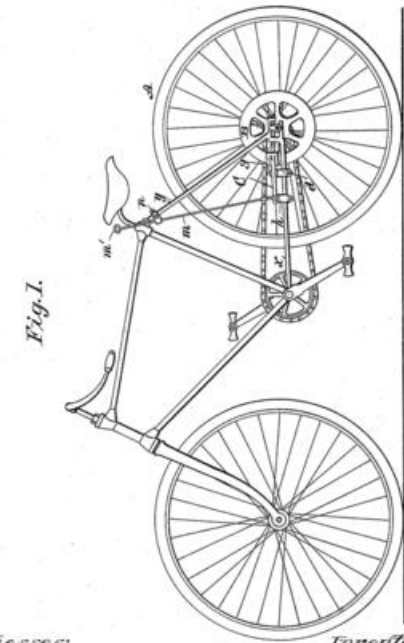




Copyright and other means of protecting intellectual property:
How do they relate?
Slide 6

- Though ordinary-looking to us today, there was a time when the bicycle in this patent, which was called a Velocipede, was cutting-edge technology. Wisely, the inventor patented it!

(No Model.) J. H. HENDRICK & A. H. FAY. 2 Sheets—Sheet 1.
BRAKE FOR VELOCIPEDES.
No. 526,317. Patented Sept. 18, 1894.



Witnesses:
J. H. Hendrick
A. H. Fay

Inventors:
Joel H. Hendrick
Arthur H. Fay
by *Shapiro & Co.* Attorneys.

Patent courtesy Joel H. Hendrick & Arthur H. Fay, [1894-09-18-Patent-526317-Brake-for-Velocipedes Page1](https://www.uspto.gov/patents/publications/1894-09-18-Patent-526317-Brake-for-Velocipedes-Page1), marked as public domain, more details on [Wikimedia Commons](https://commons.wikimedia.org/wiki/File:1894-09-18-Patent-526317-Brake-for-Velocipedes-Page1)





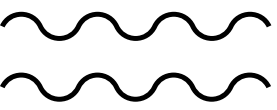
Receiving Copyright Protection slide 1

- The Berne Convention for the Protection of Literary and Artistic Works is one of the most significant international agreements regarding copyright law.
- WIPO serves as the administrator of this treaty.
- As of 2019, 177 countries have signed this agreement (Creative Commons Organization 24).
- When one considers that, as of 2020, there are 195 countries in the world, this is a significant majority of nations ("How Many Countries").



Receiving Copyright Protection slide 2

- The signers of the Berne Convention have agreed to several fundamental principles. These include but are not limited to:
 1. Copyright must be granted automatically (there are no legal formalities).
 2. All countries give foreign works the same protections as works created within their borders.
 3. The minimum term for copyright protection (with some exceptions) is the author's life plus 50 years (Creative Commons Organization 24).



Receiving Copyright Protection slide 3



Recall that one of the commonalities of copyright laws is that "copyright is automatic the moment a work is fixed in a tangible medium" (Creative Commons Organization 16).



This aligns with the Berne Convention's principle that copyright is granted automatically and no legal formalities are necessary (Creative Commons Organization 24).



From this perspective, the moment one puts pen to paper, snaps a photo, or produces an original creative work in some other medium and has a tangible record of that work, that person owns the copyright!



○ Receiving Copyright Protection slide 4

- Of course, one may want to obtain a more formal copyright. Doing so will vary by country.
- In the United States one can apply for a copyright simply by visiting the [Federal Copyright and Trademark Registration](#) website and filling out an online form.
- This website is administered by the United States Copyright Office, which is a part of the Library of Congress.
- Also, let us not forget that when we register a work under a Creative Commons license, we have not given up the copyright, but rather have shared a work "with the public under more permissive terms than the default 'all rights reserved'" (Creative Commons Organization 7).

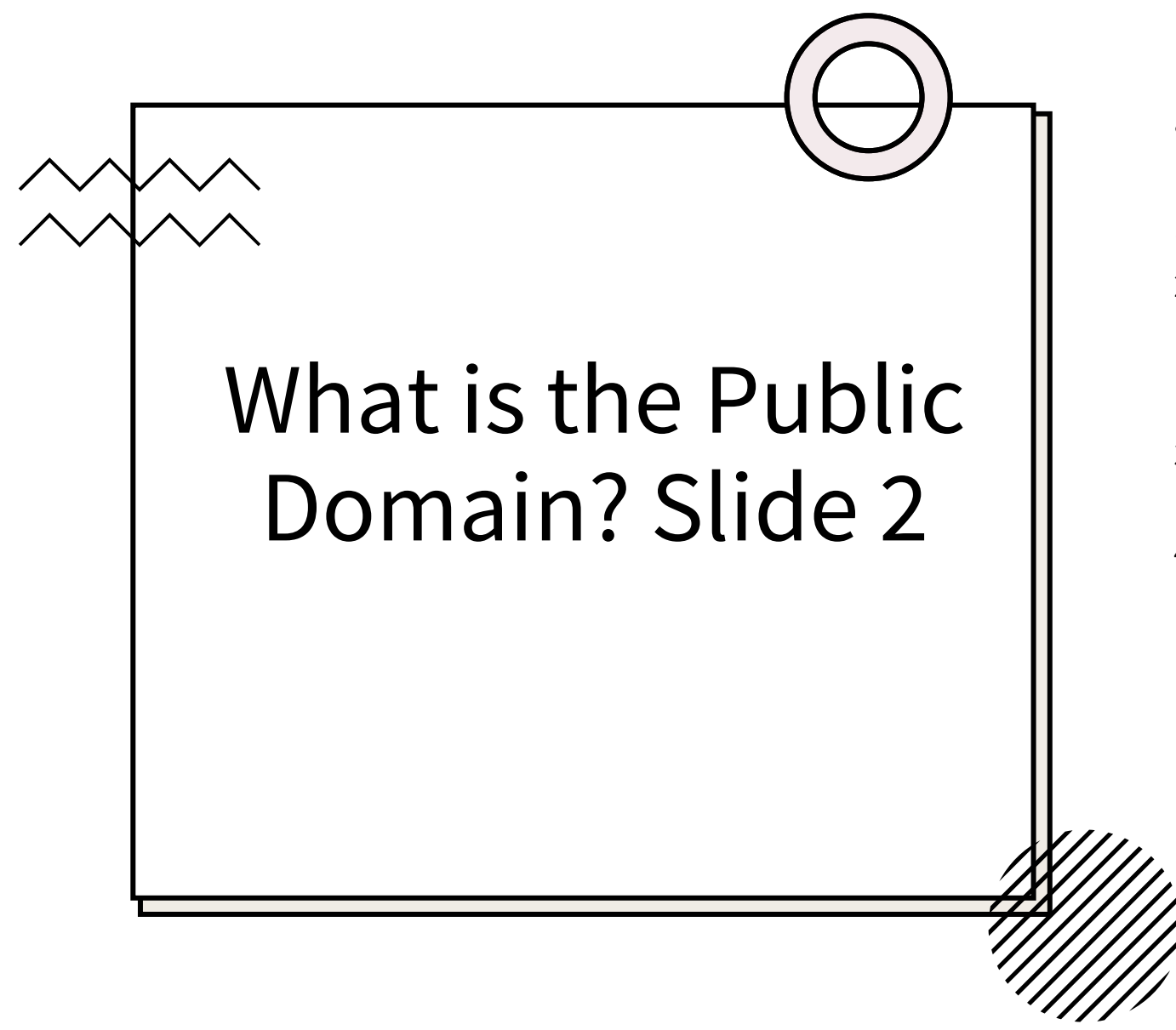




What is the Public Domain? Slide 1

- When we speak of the **public domain**, we are referring to a vast pool of resources available to the public that are not subject to copyright (Creative Commons Organization 27).
- Recall that the minimum copyright term under the Bern Convention is the author's life plus 50 years.
- Once this period (or longer in some countries) has passed, the copyright expires, and the work enters the public domain.
- It bears mention that in the United States this was extended to the author's life plus 70 years.
- In some countries it may be up to 100 years after an author's death before a work passes into the public domain (Creative Commons Organization 28).





What is the Public Domain? Slide 2

- A work may become part of the public domain in the following ways:
 1. Copyright expires (as previously explained)
 2. The work was never entitled to copyright protection (official texts of a legislative, administrative, or legal nature, works that are purely functional, and in some countries works by government employees)
 3. The creator chooses to dedicate the work to the public domain before copyright expires.
 4. The copyright holder failed to comply with the formalities required to acquire or maintain their copyright. This is no longer required in most countries now but was in the past, and a large volume of work entered the public domain this way (Creative Commons Organization 28-29).

○ What is the Public Domain? Slide 3

- You can do almost anything you wish with a public domain resource, but it is important to remember that works that are considered public domain in some countries may not yet be considered public domain in others.
- For this reason, one must consider the work and the copyright laws of the country in which it will be used!
- The copyright laws of the country in which it will be used will take precedence, even if it has entered the public domain elsewhere.



Picture of globe courtesy Fenning, Daniel, [A new and easy guide to the use of the globes; and the rudiments of geography](#) Fleuron T199289-3, marked as public domain, more details on [Wikimedia Commons](#)



○ What is the Public Domain? Slide 4

- There are several excellent sites from which public domain resources can be obtained. A few good examples include:
 1. [Project Gutenberg](#), which now has over 60,000 free eBooks!
 2. [Digital Public Library of America](#), which has more 40,708,413 works including images, texts, videos, and sounds from across the United States.
 3. [Wikimedia Commons](#), a collection of 64,427,854 freely usable media files to which anyone can contribute. This includes extensive CC licensed resources as well as public domain.
 4. [Free Music Archive](#), which includes thousands of music files in the public domain or available under various CC licenses.
 5. And many more!





Copyright Exceptions: Fair Use/Fair Dealing Slide 1

- There are times when copyrighted works can be used without permission.
 - **Fair use** and **fair dealing** are two terms that refer to the exceptions to use of copyrighted work.
 - Some of the times copyrighted work may be used without permission include:
 1. Uses for the purpose of criticism
 2. Commentary
 3. News Reporting
 4. Teaching
 5. Scholarship
 6. Research
 7. Parody
 8. Access for the visually impaired (Creative Commons Organization 32)
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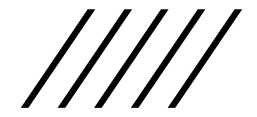


Copyright Exceptions: Fair Use/Fair Dealing Slide 2

- The concept of fair use was first established by the Berne Convention.
- In the United States, fair use of a copyrighted work must pass the following four factors (**four factor test**):
 1. The purpose and character of use.
 2. The nature of the copyrighted work.
 3. The amount and substantiality of the portion taken from the work.
 4. The effect of the use upon the potential market for the copyrighted work (Creative Commons Organization 33).



Copyright Exceptions: Fair Use/Fair Dealing Slide 3

- According to the U.S. Copyright Office, "Fair use is a legal doctrine that promotes freedom of expression by permitting the unlicensed use of copyright-protected works in certain circumstances."
 - "Courts look at how the party claiming fair use is using the copyrighted work, and are more likely to find that nonprofit educational and noncommercial uses are fair."
 - However, they add that this **does not mean**, "that all nonprofit education and noncommercial uses are fair and all commercial uses are not fair; instead, courts will balance the purpose and character of the use..." It is at this point that the courts would consider use of the work against the **four factor test**.
- 

○ Final Thoughts

- As educators, we must understand the basics of copyright to avoid copyright violations and understand how our own work or that of our students may be copyright protected.
- It is useful to understand what is meant by intellectual property and the various ways it is protected.
- We should be familiar with public domain resources to include where to find them and possible limitations on their use.
- We should recognize what constitutes fair use of copyrighted material in the classroom and online learning environment and strive to ensure that any such use meets the four factor test.





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