

A Framework for Analyzing a Copyright Situation

When faced with a copyright question, one of the most difficult problems is knowing where to begin -- which parts of the legal rules apply to the specific problem? To deal with this uncertainty, work through the following five questions, in the order they are presented. They are simple questions, but they are not easy to answer. But by working through them *in order*, it is possible to identify which of the parts of copyright law apply to the specific problem or fact pattern that you need to address.

1. Is the work protected by copyright?

- Is the work I want to use protected by copyright? Does it meet the criteria for copyright protection (e.g., originality, fixation)? Is the part you want to use a substantial part?
- Has the copyright expired? Apply the term rules for the applicable category of work/OSM

2. What do I want to do with the work? Will my use infringe the rights of the copyright owner or the moral rights of the author or performer?

3. Is there a license that covers my use?

- Is there a Creative Commons license attached to the work? If so, can I comply with the terms of the license, or can I find another useful work that is CC-licensed?
- Does my institution have a commercial license that governs how the copyrighted material I'm accessing through my institution can be used? If so, can I comply with the license terms?

4. Is there a specific exception in the Copyright Act that covers my use?

- Is my intended use covered by a specific exception in the Act, e.g., fair dealing or the users' rights for LAMs (copying for preservation or for research/private study)? If so, can I comply with the conditions specified in the Act or Regulations?

4a. Is my use covered by fair dealing?

1. Does my use fall within one of the allowable purposes?
2. Is my use fair? Evaluate the following factors:
 - a. the purpose of the use
 - b. the character of the use, including number of copies and breadth of dissemination
 - c. the amount and substantiality of the portion used in relation to the copyrighted work as a whole
 - d. the nature of the copyrighted work
 - e. alternatives to the use
 - f. the effect of the use upon the value of or the potential market for the copyrighted work

5. What do I do if I need permission from the copyright owner for my use?

- a. Locate the copyright owner and fully explain your intended use in your request for permission.
- b. If the owner does not respond, or the answer is no, reconsider your use of the work to see if you can make a fair dealing, or use another work, or assess the risk of using the work anyway.