Guide to Rights Clearance
In the Context of Producing and Disseminating Digital Content

Office of the Vice-President and General Counsel,
With the support of the ODAI Steering Committee on Policy and Shared Practice,
Yale University
This guide provides information designed to assist members of the Yale community in understanding the legal issues that may arise in the context of disseminating digital content. The information provided in this guide may not present a complete or up-to-date discussion of factors applicable to your particular activities. Further, this guide should not be treated as a substitute for legal advice nor relied on in connection with your personal activities. We recommend that you consult with the Office of General Counsel, or your own attorney, as applicable, for clarification on what legal requirements apply to your specific circumstances.
Introduction to Rights Clearance

This Guide has been developed for members of the Yale community seeking to produce and disseminate digital content, and is intended to cover digital content that:

- Yale may own under its copyright policy;
- is expected to reside on any of Yale’s websites;
- relies substantially on Yale’s facilities or other resources for its creation or dissemination;
- or
- is otherwise likely to give the impression of originating from Yale either through branding or other use of the Yale name.

When producing digital content for a Yale department or organization, you will need to resolve issues relating to the use of material created by others. You will need to determine when to seek permission to use copyrighted or trademarked materials from the original creators and/or owners of such materials. Where your department’s project includes a person’s photograph or picture or a recording of a person’s performance or presentation, you may be required to secure the rights to use such person’s voice, image or performance.

Use of third-party copyrighted or trademarked material or use of a person’s identifying characteristics without permission may be illegal and/or unethical; it may also expose Yale to significant financial liability (see Penalties below), and tarnish the reputation of the University and those affiliated with it.

The purpose of this Guide is to provide a four-step approach to resolving or clearing such “third-party rights” and avoiding such potential risks.

- Step 1: Identifying Third Party Content
- Step 2: Confirming Whether or Not Permission is Required
- Step 3: The Alternative – Use of Free or Inexpensive Resources
- Step 4: Clearing Rights

Penalties for Copyright Infringement

<table>
<thead>
<tr>
<th>Damages</th>
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<tbody>
<tr>
<td>$750-$30,000 per work infringed</td>
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<tr>
<td>$150,000 per work if willful, plus attorney’s fees</td>
</tr>
<tr>
<td>No damages will be awarded if educational institution had reasonable belief that use was fair--but must consider costs in defending a copyright infringement action.</td>
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</table>
STEP ONE: Identifying Third-Party Content

Your first task in producing digital content is to identify the elements of the project that derive from sources outside of Yale to determine whether rights clearance will be necessary. A Third-Party Content Inventory Form may be useful to identify and track all content included in your department’s digital project.

When filling out the Inventory Form, you should list all content included in your department’s project without thought to whether or not such content requires clearance. Examples of the types of content you should include in your inventory appear below:

<table>
<thead>
<tr>
<th>Examples of Content</th>
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<tbody>
<tr>
<td>- A person’s voice, image or performance</td>
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<tr>
<td>- An interview (interviewee’s response, interviewer’s commentary and questions)</td>
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<tr>
<td>- Text (e.g. book or magazine excerpt, script) presented in written form or</td>
</tr>
<tr>
<td>performed/read</td>
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<tr>
<td>- Musical compositions (performance or score)</td>
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<tr>
<td>- Lyrics (written form, performed/read)</td>
</tr>
<tr>
<td>- Pre-existing sound recordings or audio-visual recordings</td>
</tr>
<tr>
<td>- Chart or diagram</td>
</tr>
<tr>
<td>- Photograph</td>
</tr>
<tr>
<td>- Illustration</td>
</tr>
<tr>
<td>- Symbol or trademark</td>
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</tbody>
</table>

At this stage, you should also start gathering and supplementing your Inventory Form with details that will help you to determine whether particular content is covered by copyright or involves the use of trademarks, a brand identity or personal identifying information. This information and other details included on the sheet will inform whether you will need permission to use specific content for your project. Below is a list of basic details that you should look out for:

<table>
<thead>
<tr>
<th>Examples of Helpful Details</th>
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</thead>
<tbody>
<tr>
<td>- Name(s) of content creator and/or rights holder — such as author, trademark</td>
</tr>
<tr>
<td>registrant, publisher, interviewee, artist, or performer</td>
</tr>
<tr>
<td>- Any copyright notices on the material (including the date of any copyright</td>
</tr>
<tr>
<td>renewal, if applicable):</td>
</tr>
<tr>
<td>- Books/articles: appearing on the copyright page of the book or journal</td>
</tr>
<tr>
<td>- Music recording: appearing on the label or in the liner notes</td>
</tr>
<tr>
<td>- Date and country of first publication</td>
</tr>
<tr>
<td>- Address and other contact information for rights holder(s)</td>
</tr>
<tr>
<td>- Amount of material to be used</td>
</tr>
</tbody>
</table>
A completed Inventory Form is provided as an example of the level of detail you should strive to achieve in documenting any third-party material to be included in your department’s digital project.
STEP TWO: Confirming Whether or Not Permission is Required

After identifying the content you want to include in the project, you must determine whether it is necessary to secure permission from the rights owners of such content. You should assume that all third-party content (i.e., content from a source not originating from Yale) requires rights clearance unless you have determined otherwise by carefully applying the analysis in this Section.

No Permission Required

Fortunately, there are a number of situations where you will be able to use copyrighted material without securing permission. The following is a list of instances where material created by third parties may be used without securing permission. Check to see if the material you wish to use falls within one of these exceptions.

- The material has fallen into the public domain.
- Yale owns the material (i.e., Yale asserts ownership under its copyright policy, the material was created on a work-made-for-hire basis, or all rights were otherwise assigned to Yale) and approval from the appropriate department is obtained. [See Yale Copyright Policy. See also Working with Vendors—the Work-for-Hire Relationship discussion.]
- The material consists of ideas, facts or theories (but not the unique expression of those ideas, facts or theories by someone else).
- The material is a slogan or short phrase that is not being used in a manner that conflicts with trademark laws or is libelous. [See Trademark discussion.]
- The material was created by a U.S. government employee in the scope of his or her employment and does not contain notification regarding restrictions on use.
- The author of the material has expressly made the work available for unrestricted copying or distribution.
- The material consists entirely of information that is common property and contains no original authorship (e.g. height and weight charts, tape measures and rules, lists or tables taken from public documents or other common sources).
- The material is used under the principle of “fair use.” [See Fair Use discussion.]

AND IN ADDITION TO THE FOREGOING

- The content does not contain a person’s voice or image in a manner that invokes privacy or publicity rights. [See Privacy/Publicity discussion.]
1. Using the Information on the Inventory Form to Resolve Rights Clearance Issues

Much of the information you will need to determine whether permission is required may be found in the completed Inventory Form. For example, if the “Owner Section” of the form indicates that the creator of the content is “Yale” or a “Yale employee,” you will need only to obtain approval from the appropriate Yale department. The “Date and Country of First Publication” will help you determine whether the material has entered the public domain. The more specific the information included on the form, the better: Describing the material in a short phrase or a few lines may be all that is necessary to lead to the assessment that the work is not covered under copyright or that fair-use may apply.

2. Term of Copyright in the United States and Public Domain

One popular way of avoiding rights clearance difficulties is by utilizing works that are in the public domain. A work of authorship is in the “public domain” if it is no longer under copyright protection or was never entitled to copyright protection. Works in the public domain can be used freely and reproduced in any manner by anyone without the need for permission. Previously copyrighted material will fall into the public domain when the copyright has expired or the copyright owner has failed to comply with copyright renewal procedures.

The Public Domain Chart developed by Cornell University [http://www.copyright.cornell.edu/public_domain/] is a helpful tool, which may be used to determine whether the copyright term of a work has expired, and if, as a consequence, the work has fallen into public domain. This chart will be most helpful where your Inventory Form identifies pertinent information such as the date of the copyright, the date of first publication and the country where work was first published.

3. Fair Use of Copyrighted Works

The doctrine of “fair use” under United States Copyright Law allows for the free use of copyrighted materials under certain circumstances for purposes such as criticism, commentary, news reporting, teaching, scholarship and research.

The determination of whether fair use applies in any instance requires a balancing of the four factors. There are no hard and fast rules with regard to the application of fair use. As a general approach, you should keep in mind that you should only use that amount of copyrighted material necessary for your intended purposes and courts are more likely to find fair use where the use of the copyrighted materials is transformative. We recommend also attributing the source of the work whenever possible. To determine whether fair use applies to your particular use of a third-party work, the Fair Use
Analysis Tool developed by the Office of the General Counsel is available to guide you through the analysis.

4. Orphan Works

An “orphan work” is a copyrighted work for which copyright clearance is required, but:

- the identity of the owner of the work is unknown; or
- the owner is known, but cannot be located.

When faced with a work that you believe may be “orphaned,” before undertaking the challenge of locating the author/owner, first consider whether any exception allowing for the use of the copyrighted work without securing permission is applicable. For example, when seeking to use an excerpt of an out-of-print work for which neither the publisher nor author may be found, consider whether fair use applies. If none of the relevant exceptions apply, next determine whether the work is truly orphaned—whether the owner’s identity and location truly cannot be determined. The Society of American Archivists is one of a few organizations that have identified excellent strategies [http://www.archivists.org/standards/OWBP-V4.pdf] for searching for the owner of works that appear to be orphaned. Please keep in mind, however, even where the author may not be located for permission, your use of an orphan work is technically considered copyright infringement unless fair use or some other exception under the copyright law applies, and penalties may apply. Even proposed orphan works legislation currently under consideration allows merely for the reduction of penalties for users of a suspected orphaned work if after utilizing diligent efforts to locate the work’s owner the owner could not be located. As an alternative to using an orphan work, you should consider using works that are available for free or which require nominal payments. [See Free Resources discussion.]

5. Content from Foreign Jurisdictions

The Internet respects few boundaries, so it’s important to exercise extreme caution when using foreign works in your projects. If you wish to make use of works from foreign territories, never assume that a work has fallen into the public domain merely because a work was published prior to a given date (e.g. 1923) or that exceptions provided under U.S. law are relevant. Different legal rules often apply to materials created or used in foreign jurisdictions. For example, a work first published in a foreign territory that appears to be in the public domain under U.S. copyright law might not be in the public domain under its home country’s copyright law. Exploiting such a work in its territory of origin may lead to a claim of infringement. Moreover, exceptions to the copyright law frequently utilized in the U.S. may be not be available as defenses when exploiting certain works abroad. For example, fair use is a concept that is recognized only under U.S. law, although some countries such as Great Britain and Canada recognize the similar concept of “fair dealing.”
6. Working with Vendors—the Work-for-Hire Relationship

There may be instances when you will hire an outside vendor or independent contractor to design a website, develop software, capture images and/or audio, perform, and/or create artwork or written material. The intellectual property rights in the materials that result from these types of activities will be deemed the property of Yale only if the vendor or contractor explicitly transfers such rights to Yale pursuant to a signed, written instrument (an “assignment”). Yale may also claim ownership where the written contract for the independent contractor’s services specifically provides that the work was commissioned as a work-for-hire. This work-for-hire scenario is, for various reasons, the preferable one, but in order for rights in works to be transferred automatically to Yale as “works-made-for-hire,” such works must fall within one of nine categories of “commissioned work” enumerated under the Copyright Act. Attached are a sample Copyright Assignment and the Work for Hire Agreement that can be used to secure rights from vendors and independent contractors. If you engage outside vendors or companies with the support of Yale’s Procurement Department (“Procurement”), Procurement will likely use Yale’s Standard Professional Services agreement, which contains appropriate language for ensuring Yale’s ownership interests in creative and/or intellectual materials resulting from the vendor/independent contractor relationship.

<table>
<thead>
<tr>
<th>Commissioned Works Accepted Under U.S. Law as Works-for-Hire</th>
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<tbody>
<tr>
<td>• contributions to a collective work</td>
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<tr>
<td>• as a part of a motion picture or other audiovisual work</td>
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<tr>
<td>• as a translation</td>
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<tr>
<td>• as a supplementary work</td>
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<tr>
<td>• as a compilation</td>
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<tr>
<td>• as an instructional text</td>
</tr>
<tr>
<td>• as a test</td>
</tr>
<tr>
<td>• as answer material for a test</td>
</tr>
<tr>
<td>• as an atlas</td>
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</tbody>
</table>

Examples of Supplementary Works

- Forewords
- Afterwords
- Pictorial illustrations
- Maps
- Charts
- Tables
- Editorial notes
- Musical arrangements
- Answer material for tests
- Bibliographies
- Appendixes
- Indexes
STEP THREE: The Alternative—Use of Free or Inexpensive Resources

Sometimes, even after going through the proper steps, you may not be able to determine the identity of the rights holder for the content you seek to use, or the rights holder that you seek out may not respond to your request. Moreover, you may determine that your department does not have the funds to pay for a license to use the desired content, or the rights holder may say no to your request. Using content without permission may leave you and the University at risk for copyright infringement. The University advises that you not use content without permission from the rights holder unless fair use or some other legal exception applies. It is important never to assume that any copyrighted material, especially material available on the web, may be used freely. Where the desired content is unavailable, it is good to have a back-up plan. In such instances, as a fall-back, you should try obtaining alternative content to use in place of the desired content. For example, if you are using an illustration or even a musical performance, it might be possible to commission the creation of a substitute that achieves the same effect. With some research, you may even be able to find alternative content that is already owned by the University or you may find resources that offer comparable content for free or minimal cost. In order to help facilitate finding free materials online or materials for a minimal cost, a listing of free resources is attached.

Also of note, Yale University announced its policy, *Open Access to Digital Representations of Works in the Public Domain from Museum, Library and Archive Collections*, in May 2011. Images of Yale collections in the public domain are available without restrictions from the websites of Yale museums and libraries.
STEP FOUR: Clearing Rights

If it is determined that a work is not in the public domain, that fair use is not available/will not be relied upon, that Yale does not otherwise own the rights to use the work or that privacy or publicity rights are involved, permission must be obtained from the pertinent rights holders. This section provides information regarding the rights implicated by specific uses and the respective holders of those rights, as well as resources for identifying and obtaining contact information for such rights holders. Also provided below are forms for permission requests to be used in connection with rights acquisition, although in some cases the rights holders will require that their form of permission or license be used. In some cases, multiple rights in a single work may be owned and controlled by a single person/entity, and in others, multiple sources must be contacted.

Your approach to clearing rights in specific content will depend greatly on the nature of such content—whether it is music, interviews, text, audiovisual recording, etc.—as designated on your Inventory Form. Different types of content will invoke different types of rights that require clearance: Some content will require focus simply on rights covered under copyright, others will involve publicity/privacy rights, and still others might involve trademark or any combination of the foregoing rights. We will address those various rights in the following order: Publicity Rights, Copyright and Trademark.

1. Publicity/Privacy Rights, Libel and Defamation

Your department’s digital project might include biographical material or an interview, lecture or performance by a faculty member, visiting scholar, lecturer or other notable guest of the University. It might include preexisting material from a performance in a film or on an audio recording. The project might even include statements and responses from individuals selected from a live audience, a class or the general public. Often, in order to include a person’s performance or voice (and with respect to visual materials, likeness or image), it will be necessary to clear publicity and privacy rights. There is a great deal of overlap between publicity rights and privacy rights. Typically, these rights involve: (i) the use of a person’s personal characteristics in a commercial context; (ii) the use of private information about a person in a manner that places such person in a false light; (iii) the making of statements about a person that might damage such person’s reputation (libel/defamation); (iv) and the intrusion on a person’s expectation of seclusion or solitude.

You can usually clear publicity rights—obviating claims that the use of information about a person violates such person’s privacy or publicity rights—by obtaining “releases” from the appropriate parties. In this context, a release constitutes an agreement whereby one party agrees not to sue another based on a privacy or publicity right violation. While a release will not be required every time a digital project includes a voice or makes reference to a name, the Standard Form Release should be used whenever a person’s voice, image or performance is used in a manner that identifies such person and where
the use is not merely incidental and where such use is not serving a news reporting or newsletter function.

### EXAMPLES OF PERSONS FROM WHOM A RELEASE IS REQUIRED:

- Interviewers
- Interviewees
- Lecturers
- Presenters
- Commentators
- Performers
- Persons whose voice, likeness, image or other identifiable characteristic appears in an underlying work or pre-existing recording used in the web-based educational materials.
- Audience members who participate in the web-based educational materials and may be identifiable by name or distinguishing characteristic, and where the appearance of the person is not merely incidental.

Additionally, care should be taken in instances where content includes material that directly or indirectly injures a person’s reputation. Use of such material may lead to libel or defamation claims. Defamation is a false statement that injures another’s reputation. Libel occurs when such false statement is published in some manner. When dealing with presumed factual material that may have an injurious effect on a person’s reputation, the practice will not be to secure a release (if the material is controversial, it is likely that such a release will not be forthcoming), but to ensure that the information that is being shared publicly is well-documented as truthful, a fair report of an official record or procedure, or a statement of opinion rather than fact. See the Libel Checklist for more information.

Also worth noting, particularly if you will be using the content on a Yale website, are the protections afforded Internet Service Providers (ISPs) by the Communications Decency Act. The Communications Decency Act broadly shields ISPs from defamation claims. However, this safe harbor protection is not afforded to ISPs where the ISP plays more than a passive role in creating the content in question. Hence, if you are responsible for creating a website, Yale is unlikely to be deemed liable for content uploaded by its users. In such case, Yale is passively presenting the content. However, by contrast, where the users are Yale employees and the content is uploaded by such employees (e.g. Facebook updates), Yale may be deemed liable for such content, as Yale, through its employees, is actively selecting and presenting the content.

Also, be mindful that the standard for alleging defamation may be easier to assert in foreign territories, as is the case in the United Kingdom.
Copyright

When securing permission to use copyrighted material, you must consider the type of content involved and the nature and scope of your intended use prior to contacting any rights holder, as this will comprise the terms of any license. You must settle the following questions:

- What is the nature of the content I want to use? (Type of Content)
- What do I intend to do with the content? (Media and Uses)
- Where will the content be exploited? (Territory)
- Would the right to use be perpetual or for a specific period? (Term/Duration)

What follows is guidance on how to address rights clearance matters as they pertain to different types of content:

- Interviews and conversations
- Photographs
- Artwork
- Voice recordings
- Music
- Audiovisual works

a. Interviews and Conversations.

Copyright in an interview can be owned by at least two parties: the interviewer and the interviewee. An interviewee will hold copyright in his or her verbatim responses. An interviewer will likely hold copyright in his or her questions and any accompanying commentary, as well as in his or her arrangement and organization of the interview responses. You should ensure that the interviewee and interviewer have consented to the interview, to any adaptation of their questions and responses, to the inclusion of that content in the digital project and to its distribution on the terms required by the University. It is safest to obtain written consent from the interviewee and interviewer – or at least a recording of their verbal consent – prior to using the interview. Also, as any recorded interview will include a person’s voice/likeness, it is necessary in such contexts to clear publicity rights as well. [See Privacy/Publicity discussion. ] This can all be achieved in one document.

<table>
<thead>
<tr>
<th>INTERVIEW--POTENTIAL RIGHTS HOLDERS/ REQUIRED RIGHTS</th>
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<tbody>
<tr>
<td><strong>Interviewer may claim rights to:</strong></td>
</tr>
<tr>
<td>- Questions</td>
</tr>
<tr>
<td>- Commentary</td>
</tr>
<tr>
<td>- Arrangement and organization of the interview</td>
</tr>
<tr>
<td>- Publicity Rights [see Publicity Rights ]</td>
</tr>
<tr>
<td><strong>Interviewee may claim rights to:</strong></td>
</tr>
<tr>
<td>- Responses to questions</td>
</tr>
<tr>
<td>- Commentary</td>
</tr>
<tr>
<td>- Publicity Rights [see Section Audio-Voice Recordings, and Publicity Rights ]</td>
</tr>
</tbody>
</table>
b. Text (including poetry, letters, selections from other publications, etc.).

You must secure the express and specific permission of the rights holder whenever you include copyrighted text in your project and fair use does not apply. The rights to written texts can be held by publishers, individuals or estates. The ability to negotiate rights through an estate or individual is variable. Such negotiations are not always driven by considerations of profit or promotional opportunities. It may be the luck of the draw whether such negotiations are ultimately successful. Requesting permission from a publisher is more predictable insofar as the publishers often have specific licensing procedures often posted on their websites describing their preferred approach to licensing (including any online forms they want you to complete and submit), the information they require to process a license request (such as the ISBN of the work) and any fees they charge for licensing various uses. Rights may also be cleared through licensing services such as Copyright Clearance Center [http://www.copyright.com/]. A template Permission Request Form [http://www.copyright.com/content/cc3/en/toolbar/getPermission.html] is provided as a tool that may be used in clearing rights to textual material.

<table>
<thead>
<tr>
<th>TEXT—POTENTIAL RIGHTS HOLDERS/REQUIRED RIGHTS</th>
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</thead>
<tbody>
<tr>
<td>Publisher. Generally, the publisher of the work grants rights to use published texts.</td>
</tr>
<tr>
<td>Author (Author’s Agent). Generally, the author of the work (or his or her agent) grants rights to use unpublished text or rights relating to non-text uses of written material (e.g., adaptation, translation, performance,…). A good initial first step, nonetheless, may be to first contact the publisher to see if it controls the rights in question.</td>
</tr>
<tr>
<td>Estates. If the author is deceased, the author’s estate may control the rights in question. The author’s publisher or agent may facilitate rights clearance on behalf of the estate.</td>
</tr>
</tbody>
</table>

Photographs

Use of a photograph may implicate other copyrights if art [see Artworks discussion] or architectural works are captured in the photograph; trademark [see Trademark discussion], if product, service or corporate identifiers are captured; or publicity rights if a person’s image is captured [see and Publicity Rights]. All of the following rights will need to be cleared in addition to the copyright in the photograph to the extent relevant. The copyright in a photograph may be held by the photographer, his or her estate, or a corporation (e.g., publisher) to which the photographer has assigned the copyright. Where the rights to the photograph are not controlled by the photographer, rights in a photograph may often be secured or cleared through stock photo companies, media companies, archives and estates. For corporate rights holders (e.g., media or stock photo
companies), the process will be similar to that discussed under the publishing section and you may use the Permission Request Form to the extent the owner does not require the use of its own form. The challenge in clearing such rights will be to identify and capture the attention of the appropriate rights-clearance or business person.

d. Artwork

If you are considering digitizing a work of art and posting or disseminating the digitized image online, you must first determine the work’s copyright status, even if the work is in University collections. [See Public Domain and Foreign Jurisdictions discussions] You cannot assume that physical ownership of the artwork by the University means that the University also holds copyright in that work.

If Yale holds physical possession of the work and you have determined that the work is still under copyright, check with the University unit holding the artwork to determine if copyright of the work was transferred to the University when the work was given to, or purchased by, the University. If there is clear documentation that the University holds copyright to the work, you must get written clearance from the appropriate University unit specifically for your intended use. Moreover, you must also consider “moral rights” implications regarding your intended use. [See Moral Rights discussion]

   i. Securing Permission.

Where the University does not retain copyright, you must request and seek the prior written and specific permission of the copyright holder. [See Permission Form] If applicable, the form should also make the copyright holder aware that the digital reproduction of the artwork may be publicly accessible by search engines.

The copyright holder is usually the artist or the artist’s heirs or assigns, such as a foundation set up by the artist’s estate. The following are resources that may assist your investigation of the copyright status and ownership of the work you wish to use:

   WATCH file: The WATCH (Writers, Artists, and Their Copyright Holders) file is a database containing primarily the names and addresses of copyright holders or contact persons for authors and artists whose archives are housed, in whole or in part in libraries and archives in North America and the United Kingdom.

   U.S. Copyright Office: You can search a public database at the U.S. Copyright Office for copyright information on all works registered with the U.S. Copyright Office after January 1, 1978.
ii. **A Note on Fair Use and Artwork**
The application of the fair use doctrine to the use of artwork is a risky proposition. The law in this area is in constant flux. Nonetheless, there are cases that provide clarity with regard to the use of thumbnail reproductions. Thumbnail reproductions may qualify as fair use under certain, narrow circumstances. These include use in image search engines or to illustrate a timeline.

iii. **Modification and Moral Rights**
Regardless of the copyright status of the work, including public domain works, you must also consider the possible “moral rights” implications of your intended use. “Moral rights” refers to the rights of an artist to control the reputational integrity of his or her work once it has left the artist’s studio and is owned by others. In general, moral rights include the right of the artists to receive attribution for their works, to disclaim attribution to works they did not create and to prevent modification or alteration of their works. In the U.S., moral rights are personal to the artist, cannot be transferred and expire upon the artist’s death. Prior to modifying the work of any living American artist, you must seek the written permission of the artist for your intended use, even if you have determined that your intended use does not require copyright permission or if you have obtained copyright permission from the copyright holder who is not the artist. **In instances in which you have obtained copyright permission from the artist, make sure such permission includes a waiver of moral rights.**

Moral rights in other countries differ widely and may extend beyond the life of the artist. For example, in France, moral rights survive in perpetuity and are so broad as to allow artists, or their descendents, to stop publications of their works, even those in public domain, so long as the use could be deemed to conflict with the artist’s original expression. If you are concerned that your use may have moral rights implications, please consult the Office of the Vice President and General Counsel for guidance.

iv. **Crediting the Artist**
In every instance involving use of a work of art, you must provide a written credit line containing the title of the work, if any, and the name of the artist. In most cases, the individual or entity granting consent for use of the work’s image will require you to agree to and comply with its terms and conditions.

e. **Preexisting Audio Voice Recordings (Non-Musical)**
Yale has extensive holdings of taped interviews, oral histories and performances. As with artwork, the mere physical ownership of these materials does not imply ownership in such material’s intellectual property. It is important to keep in mind that, except in the
instance where Yale is responsible for the recording and has cleared the appropriate rights at the time of the recording’s creation or Yale otherwise owns the copyright in the recording, you will need to determine the types of rights to be cleared and secure the necessary permission. There are generally two copyrights in audio voice recordings: copyright in underlying work recorded (such as a text or script) and copyright in the recording itself (the fixation of sounds). Even seemingly minor reproductions or arrangements of the original sounds can violate the owner’s copyright in those sounds.

Precisely because there are two copyrights in audio voice recordings, you are free to create a new recording of independently fixed sounds, even if your recording sounds identical to a pre-existing recording. You will still need to obtain permission, however, to use the underlying work. For example, if you are fond of a recording of Oprah Winfrey reading a chapter of Alice Walker’s book *The Color Purple*, you can avoid infringing on Oprah’s copyright by generating a recording of yourself reading that chapter. Nevertheless, you will still have to get permission from the author, Alice Walker (or her publisher), in order to use your own recording of that chapter in your web-based educational materials.

**f. Music**

Multi-media digital projects often include music. Music can act as the centerpiece of a project, or merely serve to enhance the user experience. Whether you are using a pre-existing recording or making a live performance at Yale available to a wider audience, you will be required to sort through a host of rights clearance issues. How these issues are resolved and the effort required to resolve them will depend on the type of music you wish to use (e.g., a preexisting recording vs. a Yale-sponsored recording of a live performance) and the type of use contemplated (e.g. non-interactive stream, i.e., the user cannot select the music to which she is listening vs. interactive stream, i.e., the user can select the songs “on-demand”). The process will also vary depending on whether the music will be made available through Yale’s website, a Yale channel hosted by a commercial Internet Service Provider, such as iTunes or YouTube, or distributed through some other means. All of these issues are discussed in detail, below.

As many as three separate copyrights may be relevant with regard to any particular musical work: (a) copyright in the musical composition (including the musical notes and notations); (b) copyright separately in the music and any lyrics that comprise the work; and, (c) if the work has been performed by a particular musician or group and such performance has been recorded, copyright in the recording of the work.

Furthermore, a number of exclusive rights may be relevant with regard to any particular use of a musical work: (i) the right to create an original recording of an existing musical composition; (ii) the right to reproduce and distribute copies of a sound recording of a performance of the musical composition; (iii) the right to perform a work publicly; and (iv) the right to modify the work.
Assuming that fair use does not apply, in clearing such rights to copyrighted music, you may also need to deal with more than one copyright owner or secure more than one type of license, depending on your intended use.

The following are a number of scenarios and rights clearance steps that may apply to your use of digital recordings of music.

i. **Recording/Distributing Music (Mechanical Rights)**
   To record the performance of copyrighted music, you must obtain “mechanical rights” from the rights holder (the music publisher or, sometimes, the composer or lyricist) or the rights holder’s agent. Under copyright law, anyone seeking mechanical rights may obtain a “compulsory license” from the rights holder or agent by paying a royalty of an amount specified by statute. Rights holders may, in their discretion, agree to lower royalty rates. Approximately 80% of music publishers process requests for mechanical licenses through the Harry Fox Agency, a single-source licensing service. The remaining music publishers manage their mechanical licenses in-house. The Harry Fox Agency licenses cover a variety of digital formats. The Harry Fox Agency provides extensive information regarding its offering of licenses as well as general information regarding the process for clearing rights to music on its website (www.harryfox.com/public/FAQ.jsp).

ii. **Creating Video or Images with Music**
   Combining music with images or other visual works involves yet another set of rights. In such cases, you need to determine whether you will need to obtain one or more of the following licenses: (i) a “synchronization” license, (ii) a “master use” license, or (iii) a “videogram” license. A synchronization license, which permits one to synchronize a musical work with an audiovisual work (like a motion picture or TV program) or even as background on a website that contains images, can usually be obtained from the copyright owner, who is most often the music publisher. A master use license’s scope may include the use of a particular recording of a musical work in tandem with images. This license can be negotiated directly with the record company that produced the recording in question. Finally, a videogram license covers licenses for programs contained in audiovisual devices that are primarily intended for sale to the public. Assuming that you intend to distribute your web-based educational materials publicly, you may wish to act conservatively and obtain a videogram license from the music publisher and the record company.

iii. **Non-Interactive Streams**
   To stream music through the Internet in real time on a non-interactive basis (i.e., without the user selecting the song), you typically will need to
secure a “public performance license” from one or more of the three existing performance rights societies. Yale, like many other universities, has secured blanket licenses from all three performance-rights societies. These blanket licenses typically cover live performances of copyrighted musical work on Yale’s campus (BMI, ASCAP, and SESAC). The scope of rights hereunder these licenses also extend to cover streams but only to the extent that streams are accessed through a Yale.edu website (through a Yale owned or operated server). For guidance on all other streams, you may wish to consult with an Intellectual Property specialist in Yale’s Office of the General Counsel.

To complicate things further, in instances where you intend to stream a preexisting recording, you will likely need to secure a license for the reproduction and public performance (by a digital audio transmission) of a sound recording. If the music is streamed on a non-interactive basis, rights may be cleared through SoundExchange, which collects royalties as specified under U.S. copyright law, on behalf or owners of recorded music (http://www.soundexchange.com).

iv. Interactive Streams

The clearance required for interactive streams (where the user is able to select the music streamed to the user’s device) is slightly different than that required for non-interactive streams, but is the same as required for providing music as tethered downloads (where the selected music is copied onto the device for a temporary period). Unlike the process involved with regard to non-interactive streams, you will need to secure a mechanical license from the music publisher, composer, lyricist or the Harry Fox Agency (see Mechanical Rights discussion) in addition to coverage under a blanket license from one of the performance rights societies. Further, as there is no legislative mechanism for securing rights in preexisting recordings streamed on an interactive basis, such rights must typically be secured directly from the record label. Again, as clearing such rights are at times complicated, it might be useful to discuss your strategy with a Intellectual Property specialist in the Office of the General Counsel.
Summary of Procedure for Clearing Rights to Music

Recording/Distributing Music (Mechanical Rights)
If you wish to arrange musicians to perform existing music, record that music and
- save the music as an audio-file;
- burn CDs of the music for distribution; and/or
- make the recording available for downloads (including podcast and ringtone),

then you will need to secure the following license from the following rights holders:

<table>
<thead>
<tr>
<th>License</th>
<th>Rights Holder</th>
</tr>
</thead>
<tbody>
<tr>
<td>MECHANICAL LICENSE</td>
<td>Music publisher</td>
</tr>
<tr>
<td></td>
<td>(or in the absence of a music publisher, the</td>
</tr>
<tr>
<td></td>
<td>composer/lyricist)</td>
</tr>
<tr>
<td></td>
<td>OR</td>
</tr>
<tr>
<td></td>
<td>Harry Fox</td>
</tr>
<tr>
<td></td>
<td>(if not granted directly from music publisher or</td>
</tr>
<tr>
<td></td>
<td>composer/lyricist)</td>
</tr>
</tbody>
</table>

Creating Video or Images with Music
If you wish to use a recording of music (including a music clip):
- in a video/film;
- simultaneously with images such as background music on a website;
- and/or allow for downloads (including podcasts) or burning/distribution of DVDs of those multimedia works,

then you will need to secure the following licenses from the following rights holders:

<table>
<thead>
<tr>
<th>License</th>
<th>Rights Holder</th>
</tr>
</thead>
<tbody>
<tr>
<td>SYNCRONIZATION LICENSE (for movies)</td>
<td>Music publisher</td>
</tr>
<tr>
<td>VIDEOGRAM LICENSE (for other audiovisual)</td>
<td>(or in the absence of a music publisher, the composer/lyricist)</td>
</tr>
<tr>
<td>SAMPLE/CLIP LICENSE</td>
<td>Record company</td>
</tr>
<tr>
<td>OR</td>
<td>(when using a pre-existing recording)</td>
</tr>
<tr>
<td>MASTER USE LICENSE</td>
<td></td>
</tr>
</tbody>
</table>
Summary for Procedure for Clearing Rights to Music (cont’d)

Non-Interactive Streams
If you wish to facilitate the streaming music on a NON-interactive basis (where users are not able to select what to listen to), then you will need to secure the following licenses from the following rights holders:

<table>
<thead>
<tr>
<th>License</th>
<th>Rights Holder</th>
</tr>
</thead>
<tbody>
<tr>
<td>PUBLIC PERFORMANCE BLANKET LICENSE</td>
<td>Performance rights society (in U.S.: ASCAP/BMI/SESAC)</td>
</tr>
<tr>
<td>(does not apply if music is used in dramatic context – e.g. musical, opera; then must secure Grand Rights from music publisher or composer/lyricist)</td>
<td></td>
</tr>
<tr>
<td>BLANKET LICENSE</td>
<td>Sound Exchange (If not granted directly from music publisher or songwriter)</td>
</tr>
<tr>
<td>(not required for nonsubscription broadcasts)</td>
<td></td>
</tr>
</tbody>
</table>

Interactive Streams
If you wish to facilitate the streaming of music, on an interactive basis (enabling users to select what to listen to) or allow for tethered downloads, then you will need to secure the following licenses from the following rights holders:

<table>
<thead>
<tr>
<th>License</th>
<th>Rights Holder</th>
</tr>
</thead>
<tbody>
<tr>
<td>MECHANICAL LICENSE</td>
<td>Music publisher (or in the absence of a music publisher, the composer/lyricist)</td>
</tr>
<tr>
<td>MASTER USE LICENSE</td>
<td>Record company (when using a pre-existing recording)</td>
</tr>
<tr>
<td>PUBLIC PERFORMANCE BLANKET LICENSE</td>
<td>Performance rights society (in U.S.: ASCAP/BMI/SESAC)</td>
</tr>
<tr>
<td>BULK LICENSE FOR INTERACTIVE STREAMS</td>
<td>Harry Fox (if not granted directly from music publisher or songwriter)</td>
</tr>
</tbody>
</table>
3. **Audiovisual Works ("AV Works")**

An audiovisual work is a series of related images that are capable of being shown by some device, along with any sounds that accompany the visual portion of the work. The audiovisual works category includes movies and film, but it also includes slide shows, video games, etc.

Clearing copyrights to audiovisual works present the same types of issues that arise when clearing rights to text, art and photographs—i.e., issues relating to publicity rights and fair use must be considered and the necessary licenses obtained. It is important to keep in mind that when producing an audiovisual project on behalf of Yale, it will be necessary to secure all the required “work-for-hire” and vendor agreements, providing that Yale owns all rights to various contributions to the work. If using preexisting audiovisual content (e.g., a film, television episode, etc.), ideally, owners of the A-V work have secured the rights to all of the content included in the work as would allow one owner—the owner of the actual audiovisual recording—to license the audiovisual work as a whole. For example, the owner of the material (e.g., film production company, television production company) is likely to have secured rights in and to any musical soundtrack for the work. Thus, a separate clearance process would not be required if the audio and visual components are to be used together. A typical license from the owner of an audiovisual work would include language whereby the owner of the audiovisual content represents that the owner has all rights necessary to license the content—that is, that the owner has secured rights from the actors, directors, costume designers, screenwriters, etc. In the event the owner of the content is unable to make such a representation, moving forward with the use of such audiovisual content is prohibitive, as being required to approach all of the contributors of all of the elements of the audiovisual work for permission to use their contributions to the audiovisual work would be impracticable.

4. **Trademark Trade Libel and Business Defamation**

A trademark is a word, name, symbol or device that is applied to products to indicate their source and to distinguish them from the goods of others, such as the Maytag label for washing machines. Similarly, a service mark is used in connection with the offering and promotion of a service, such as McDonald's for fast food restaurant services. A service mark identifies and distinguishes the source of a service, rather than a product. Trade dress is the non-functional and distinctive packaging, dressing, or design of a product—or, in other words, the overall commercial “image” of a product, such as the shape of the Coca-Cola bottle. For the purposes of this section, we will refer to trademarks, service marks and tradedress, collectively as “Marks.”

As with a copyright, federal law prohibits the unauthorized use in certain circumstances of another’s Mark. For the most part, such prohibition relates exclusively to the use of such protected materials in connection with the sale, distribution, or advertising of goods or services in a manner that is likely to cause confusion, mistake, or deception as to the origin, sponsorship, or approval of the unauthorized user’s goods, services or activities. But unauthorized use of Marks are also prohibited if such use results in tarnishment, which “degrades” the positive associations of the Mark and, consequently, damages the reputation of the Mark and reduces the value of the Mark to the Mark’s owner.
**Fair Use and Trademarks**

As with copyright, there is a “fair use” defense with regard to certain uses of Marks. The non-owner may avail herself of this where the Mark is used in a way that makes it clear that the use of the Mark does not imply association or sponsorship of the non-owner’s goods and services. A fair use defense is appropriate where: (1) the Mark owner’s goods or services are not readily identifiable without the use of the Mark; (2) the user only uses as much of the Mark as is reasonably necessary to identify the Mark owner’s goods or services; and (3) the user does nothing that would, in conjunction with the Mark, suggest sponsorship or endorsement by the Mark owner.

**A Word on Trade Libel**

Commentators generally agree that trademark law should not and, for the most part, cannot be used to suppress criticism of a company or a product. Nonetheless, making disparaging comments about a product may be actionable under the tort of trade libel. Trade libel involves the making of false and/or disparaging statements about the quality of the plaintiff’s goods or services that result in the pecuniary harm to the plaintiff. There are three categories into which allegedly disparaging statements fall: (1) statements that make false or disparaging suggestions as to the plaintiff’s character and also disparage the plaintiff’s goods or services; (2) statements directed solely at the plaintiff’s goods or services (in these cases, the plaintiff must prove actual damage); and (3) statements that compare products (no recovery is allowed). The Connecticut Unfair Trade Practices Act (CUPTA) prohibits false or deceptive statements or representations that result in an ascertainable loss to the plaintiff. CUPTA makes actionable false or disparaging statements or representations about the merchandise, services, or business of others even when made by the general public, as opposed to the business’s competitors. For this reason, when creating content that comments on or criticizes a product or service, you must not only clear rights, but check facts.

**In Conclusion**

While taking the steps necessary to ensure that you have secured the needed permissions for any third-party material used in your department’s digital project can be a time-consuming process, it is a crucial one. Failing to do so could not only put the University at risk financially and otherwise, it could result in your department’s digital project being pulled from the web, effectively undoing all the other effort involved in creating the project. The guidelines, information and forms provided in this document can help you navigate the rights clearance process, and help ensure your project’s success.
**Attachment 1 - Third Party Content Inventory Form**

| Title of Source Material | Type of Material (e.g. text, script, performance, interview, music*, photo, art, recording, logo, company identifier or slogan) | Name of Author/ Performer/ Creator | Name of Intellectual Property Owner (e.g. Copyright Holder, Trademark Registrant, Distributor or Publisher) | Intellectual Property Owner's Contact Information | Date/Country of First Publication/ Date of Copyright & Renewal (if applicable) | Size of Material Used (e.g. no. of words, lines, or duration) Relative to Size of Source Work | Privacy/ Publicity Info (Use of person's name, likeness, voice or other identifying information) |
|-------------------------|-------------------------------------------------------------------------------------------------|-----------------------------------|---------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| 1                       |                                                                                                 |                                   |                                                                                                                                |                                               |                                                                                                                                 |                                                                                                                                 |                                                                                                                                 |                                                                                                                                 |
| 2                       |                                                                                                 |                                   |                                                                                                                                |                                               |                                                                                                                                 |                                                                                                                                 |                                                                                                                                 |                                                                                                                                 |
| 3                       |                                                                                                 |                                   |                                                                                                                                |                                               |                                                                                                                                 |                                                                                                                                 |                                                                                                                                 |                                                                                                                                 |
| 4                       |                                                                                                 |                                   |                                                                                                                                |                                               |                                                                                                                                 |                                                                                                                                 |                                                                                                                                 |                                                                                                                                 |
| 5                       |                                                                                                 |                                   |                                                                                                                                |                                               |                                                                                                                                 |                                                                                                                                 |                                                                                                                                 |                                                                                                                                 |
| 6                       |                                                                                                 |                                   |                                                                                                                                |                                               |                                                                                                                                 |                                                                                                                                 |                                                                                                                                 |                                                                                                                                 |

*If the material is a recording, separately identify the recording as well as the underlying material comprising the recording (i.e., script, musical composition)*
### Attachment 2 - Third Party Content Inventory Form Sample

<table>
<thead>
<tr>
<th>Title of Source Material</th>
<th>Type of Material (e.g. text, script, performance, interview, music*, photo, art, recording, logo, company identifier or slogan)</th>
<th>Name of Author/Performer/Creator</th>
<th>Name of Intellectual Property Owner (e.g. Copyright Holder, Trademark Registrant, Distributor or Publisher)</th>
<th>Intellectual Property Owner's Contact Information</th>
<th>Date/Country of First Publication/Date of Copyright &amp; Renewal (if applicable)</th>
<th>Size of Material Used (e.g. no. of words, lines, or duration) Relative to Size of Source Work</th>
<th>Privacy/Publicity Info (Use of person's name, likeness, voice or other identifying information)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anatomy of hippocampal formation in &quot;Cognitive Neuroscience: The Biology of the Mind&quot;</td>
<td>photo/drawing</td>
<td>Frank Forney (illustrator)</td>
<td>W.W. Norton &amp; Company, Inc.</td>
<td>500 Fifth Avenue New York, NY 10110 Phone: (212) 354-5500</td>
<td>2002/United States of America</td>
<td>entire photo</td>
<td>N/A</td>
</tr>
<tr>
<td>&quot;Take Five&quot; on Time Out album</td>
<td>music</td>
<td>Dave Brubeck (Performer) and Paul Desmond (composer)</td>
<td>Sony (recording)</td>
<td>550 Madison Avenue New York, NY 10022 Phone: (212) 833-8000</td>
<td>1959/United States of America</td>
<td>entire recording of song</td>
<td>N/A</td>
</tr>
<tr>
<td>Casablanca</td>
<td>movie</td>
<td>Michael Curtiz (Director)</td>
<td>Warner Brothers</td>
<td>4000 Warner Blvd. Burbank, CA 91522 Phone: (818) 954-6000</td>
<td>1942/United States of America</td>
<td>Time Point 12:10-17:10</td>
<td>N/A</td>
</tr>
<tr>
<td>Benjamin Franklin: An American Life</td>
<td>Book</td>
<td>Walter Isaacson</td>
<td>Simon &amp; Schuster</td>
<td>1230 Avenue of the Americas New York, NY 10020 Phone: (212) 698-7000</td>
<td>2004/United States of America</td>
<td>4 of 608 pages (234-237)</td>
<td>Benjamin Franklin's biography as told by Walter Isaacson</td>
</tr>
</tbody>
</table>
Attachment 3- Fair Use Analysis Tool

What is fair use? While copyright law restricts the use of copyrighted materials without the copyright holder’s permission, the doctrine of fair use is available under certain circumstances as a defense to using copyrighted works without permission. As a threshold issue, section 107 of the Copyright Act provides that a fair use analysis may be applied where copyrighted works are used “for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research.” The copyright law then lists the following four factors that must be considered in determining whether a particular use falls under the “fair use” defense:

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
(2) the nature of the copyrighted work;
(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
(4) the effect on the use upon the potential market for or value of the copyrighted work.

Your Fair Use Analysis: While relevant guidance on these factors can be gleaned from court decisions ruling on whether challenged uses of copyrighted works are protected under the fair use defense, the application of the fair use factors depends on the particular facts of your proposed use. Because you are most familiar with your proposed use, you are in the best position to determine whether your proposed use of copyrighted material is permitted under the fair use defense.

Good Faith Fair Use Defense: While individuals found liable for copyright infringement may be required to pay damages up to $150,000 per act of willful infringement, a court may not award damages under the good faith fair use defense which applies to affiliates of educational, non-profit organizations who believe that their use of a work constitutes fair use. Maintaining a record of your fair use analysis can help establish such a good faith fair use defense. This tool has been developed to assist you in applying the four factors to your proposed use so that you can appropriately assess whether your proposed use of a work is covered by fair use and to document your process for arriving at your determination. Please use the “Notes” section to add more contextual information regarding your assessment of the factors in connection with your intended use.

1. Purpose and Character of Your Use
Rule: While the law articulates the distinction between commercial and nonprofit educational purposes, this distinction is not dispositive of fair use. In enacting the law, Congress specifically rejected an exemption for educational purposes. More significant to your assessment is whether your intended use of a copyrighted work merely duplicates the work or whether it will alter or transform the original work in such a way as to create something new. Where the intended use is educational and transformative, your use is more likely to fall under fair use. Even if your use is arguably commercial, your use may still qualify as fair use if it is highly transformative. Where your use merely duplicates an original work, it is quite likely that your use will not fall under fair use, even if your use is for nonprofit educational purposes.

Application:

Is the purpose of your intended use different than that of the original work?

Does your proposed use transform the original work by adding something, presenting it in a different medium and context, or altering the original work by creating new expression, insights or meaning?

Your assessment:

Describe details regarding purpose and character of the proposed use:

2. Nature of the Copyrighted Work

Rule: This factor is straightforward, but not dispositive. A court will consider whether the work you intend to use is factual or published (favoring fair use) or whether it is creative or unpublished (disfavoring fair use). Even if the nature of the work is creative, your use may qualify as fair use if used in a transformative manner (see Factor 1 above). Where you are using material that has not been previously published, however, courts are likely to be more protective of the author’s right to control first publication and your use is less likely to qualify as fair use.

Application:

Is the work that you wish to use a factual work or are you seeking to use a highly creative work, such as a poem, play, photograph or novel?

Is the work that you seek to use already published?

Your assessment:

Describe details regarding “nature” of the proposed use:
3. **Amount and Substantiality of the Portion to be Used**

**Rule:** There is no bright line rule here and your analysis of this factor will be particular to the facts. Generally, the smaller the portion of the work used, the more likely it is that your use may be considered fair. However, even if the portion you wish to use is a small percentage of the entire work, if that portion is considered the “heart of the work,” your use is less likely to qualify as a fair use. Moreover, the extent of permissible use may vary depending on the purpose and character of the use (See Factor 1 above). Thus, even if your use is arguably substantial, provided your use is the amount required to accomplish your specific purpose and/or is highly transformative, your use may still be fair. For example, at least one court has determined that the use of a copyrighted photograph in its entirety was fair use, where the use was transformative and the photograph was reproduced only as a thumbnail with less clarity than the original image.

**Application:**

Is only a short clip or excerpt to be used?

Is the portion to be used the “heart of the work”?

Is the amount to be used only that which is required to complete your purpose?

**Your assessment:**

Describe details regarding amount and substantiality of the portion to be used:

4. **Effect on the Market for Original**

**Rule:** This factor is typically given great weight by the courts, and, as practical matter, is the factor most likely to trigger a challenge to your claimed fair use. Consider whether your use deprives the copyright owner of income or whether it undermines a potential market for the copyrighted work. Some courts have found that restricting access to the reproduced content to prevent copying by others diminishes the potential negative effect on the market for the original work. Another court has found that where the use stimulates the market for the original work, such use will actually have a positive impact on the market. Note that your consideration of this factor may turn on previously considered factors, such as the amount and substantiality of the portion used. For example, under some circumstances, the more you intend to use, the more negative impact on the market and the less likely your intended use may be considered fair. This is less likely to be a factor where you are using the material for criticism or negative commentary. If you intend to use the material on an ongoing basis, such repeated use could be seen as not falling under the fair use defense, but this will depend on the circumstances.
Your assessment:

Is the material (e.g. a digital image, an excerpt of a book) available for license or sale? Is the contemplated use one which permission from the copyright holder is generally required?

Is a licensing mechanism or other payment mechanism in place for the contemplated use? If not, based on current indicators, how likely will such a mechanism be put in place?

Describe details regarding effect of the use on the potential market:

---

Final Determination: Your final determination requires a subjective balancing of each of the four factors. You may find that some factors are more significant than others under the particular circumstances or that certain factors impact others. Since transformative use is often the factor that most qualifies use as fair use, you should be sure to consider the four factors in light of the transformative use. If you determine that the fair use defense applies to your intended use, briefly explain how you have arrived at this conclusion in the box below. Please note, the University appreciates that the application of fair use is not an exact science and only requires that you make a good faith determination.

Describe details regarding your final determination:

---

If you determine that your intended use does not constitute fair use, then permission of the copyright holder is required to use the work. Keep in mind, however, that you may have alternatives. You might reevaluate your proposed use and/or consider using a smaller portion, paraphrasing the material, or limiting access to the material to adjust the fair use analysis outcome. If your use requires displaying performances of copyrighted works online for distance learning purposes, your contemplated use may be permissible under the TEACH Act which provides copyright exemptions independent of fair use. Please consult the University’s Guidelines for the TEACH Act for relevant guidance.
Attachment 4 – Copyright Assignment

This Agreement is entered into this __ day of ______, 20__ by and between Yale University (“Yale”) and ______________ (“Contributor”) in connection with Contributor’s work, contribution and involvement (the “Contribution”) in and to the [insert description of project] currently titled __________________ (the “Project”):

1. Assignment:

   For good and valuable consideration which you hereby acknowledge, you hereby irrevocably transfer and assign to Yale, in perpetuity and throughout the world, all of your rights, titles and interests to the copyrights, trademark and all other intellectual property rights, to the Project, for use (in whole, in part, or as modified or changed) in any and all media, now known or hereafter created, and for any and all other purposes that support the missions of Yale. Yale shall have the right to register the copyright in its own name and shall have the exclusive right to dispose of the copyright in any way that Yale sees fit. The assignment of all rights in the Project shall take effect upon execution of this Agreement. You hereby agree to execute all papers and perform such other proper acts as Yale may deem necessary to secure for Yale the rights herein assigned.

2. Moral Rights:

   Subject to the terms of this Agreement, you hereby waive any moral rights or any similar right with respect to the Project as such rights may presently or in the future exist by legislative enactment or otherwise.

3. Warranties and Representations:

You warrant and represent that:

   A. You are the sole and exclusive owner of the rights herein granted throughout the world and that no part of the Project has in any way been encumbered, conveyed, granted or otherwise disposed of and the same are free of any liens or claims whatsoever and that there are no claims or litigation pending, outstanding, or threatened which might in any way prejudice, interrupt or interfere with Yale’s use of the Project;

   B. You have the full right and authority to enter into this Agreement and to grant Yale the rights granted to it herein; and that

   C. Your Contribution is wholly original to you and no use by Yale of the Project will violate or infringe upon any copyright belonging to any person, firm or corporation nor will it constitute a defamation or an invasion of privacy or any other right(s) of any person, firm or corporation.
D. You hereby release Yale, its officers, employees, agents, licensees, successors and assigns, from any and all liability for damages for libel, slander, invasion of privacy, copyright infringement or any other claims arising from the use of my Contribution. Notwithstanding the foregoing, Yale is responsible for securing rights and releases from any third parties who are photographed Projected or otherwise recorded in the Project.

4. Nothing in this Agreement shall be deemed to create an association, partnership joint venture or employee relationship between you and Yale.

5. This Agreement shall be governed by the laws of the State of Connecticut. Any action or proceeding of any kind arising out of this Agreement or with respect to it shall be instituted and tried only in the federal or state courts within Connecticut.

6. This Agreement contains the entire understanding between the parties and may not be altered or modified except in writing signed by them. A waiver by either party of any breach or default by the other party may not be construed as a waiver of any other breach or default by such party.

ACCEPTED AND AGREED:

YALE UNIVERSITY: 
By: __________________________
Title: _________________________
Date: _________________________

CONTRIBUTOR:
By: __________________________
Title: _________________________
Date: _________________________
Attachment 5 – Work-For-Hire Agreement

This agreement is entered into this _____ day of ___________________, 20___, by and between Yale University, acting on behalf of [Name of Unit] (“Yale”) and ___________________ (hereafter “Contributor”). For and in consideration of the mutual promises set forth below, the parties agree:

1. Contributor shall [here insert a detailed description of the work to be provided by Contributor, including the specific duties and responsibilities].

2. Contributor acknowledges that all work [s/he] provides under this Agreement is provided as an independent contractor as a work-made-for-hire under the U.S. Copyright Laws and Yale shall be considered the author of the Works for purposes of copyright. In the event any of the works is not a work-made-for-hire or to the extent any such work is not copyrightable subject matter, Contributor hereby irrevocably assigns to Yale exclusively all of Contributor’s right, title and interest in and to such work, for use in any and all media, now known or hereafter created, and for any and all purposes in perpetuity throughout the world. Contributor hereby waives any claim to so-called “moral rights” or rights of “droit moral” that Contributor may have now or in the future in any jurisdiction with respect to the Works. Contributor agrees to execute all documents and to take all steps as Yale or its assignee finds appropriate to evidence Yale’s or its assignee’s rights in the works. This paragraph shall survive expiration or any termination of this agreement.

3. [If applicable]: Yale shall pay to Contributor the total amount of $__________ for [his/her] services as follows: [describe the timing of payments and other relevant payment terms].

4. Contributor agrees that all work under this Agreement shall be completed on or before __________. In the event that Contributor fails to complete the work by that date, Yale may, at its option, extend this Agreement for a fixed period of time as it determines to be appropriate. In the alternative, Yale may obtain the services of another contractor to perform the work described in paragraph 1, in which case the Contributor shall provide Yale with all work produced to the date of Yale’s election under this paragraph.

5. Contributor represents and warrants that all materials furnished and used under this agreement are his/her own original works or materials for which s/he has obtained ownership of the copyright. Contributor further represents and warrants that the materials do not infringe on any copyright, privacy right, common law right, or any other rights of any third party.

6. Contributor agrees to indemnify and hold Yale harmless from and against all liability, injuries, claims, damages or loss, including costs, expenses, and attorneys’ fees, which arise in connection with, in relation to, or as a result of Contributor’s negligent acts or omissions under this Agreement or in connection with Contributor’s breach of warranties or representations under this Agreement. The foregoing agreement to indemnify and hold harmless shall not apply to the extent such liability, injuries, claims, damages, or loss was caused directly by the intentional, willful, or reckless acts of Yale.
7. [If applicable] Contributor’s contribution to any copyrighted work resulting from the performance of services under this Agreement shall be acknowledged: ____________.

8. This Agreement is governed by and interpreted in accordance with the laws of the State of Connecticut, without regard to its principles of conflicts of law. All disputes regarding this Agreement shall be resolved in the state or federal courts located in New Haven, Connecticut.

For Yale University

Date: __________________________

Contributor

Date: ______________________________
Attachment 6 – Standard Unlimited Release

Grant

For consideration which I acknowledge, I irrevocably grant to Yale University (“Yale”) the right to record, photograph, publish, stream live, broadcast, distribute, exhibit, digitize, copyright, license, transfer with or without consideration, reproduce, edit, or otherwise use my name, biographical information, recorded voice, or video, photograph, likeness and/or performance in print, television, radio, electronic media and all other forms and media now known or hereafter invented. I agree that such use can be for any purpose at Yale’s discretion, including without limitation, education, trade or any commercial purpose throughout the world and in perpetuity. Yale is permitted, although not obligated, to include my name as a credit in connection with such use.

Release

I release Yale from any claims that may arise regarding the use of my image, name, biographical information, performance and/or voice including any claims of defamation, invasion of privacy, or infringement of moral rights, rights of publicity or copyright. I have no right of approval or inspection and no claim for compensation arising out of or in connection with any use hereunder.

General

Yale is not obligated to utilize any of the rights granted in this Agreement and all such rights and releases herein extend and apply to Yale, its assigns, licensees, distributors, successors and agents.

This Agreement shall be governed by the laws of the State of Connecticut without regard to its principles of conflicts of laws, and shall be binding on me, my heirs, assigns, licensees, and legal representatives.

I have read and understood the foregoing and I am over the age of 18. This Agreement expresses the complete understanding of the parties.

Name: ___________________________ Date: ________________

Signature: ___________________________ 

Address: ____________________________________________________________

Parent/Guardian Consent [include if the person is under 18]

I am the parent or guardian of the minor named above. I have the legal right to consent to and do consent to the terms and conditions of this release.
Parent/Guardian Name: ________________________________ Date: _______________

Parent/Guardian Signature: _________________________________________________

Parent/Guardian Address: _____________________________________________
Attachment 7 – Speaker’s Permissions Form

Grant
I consent to the recording of my statements, image, likeness, actions, voice, conversations and material spoken or otherwise provided by me to Yale in connection with the [presentation/lecture/speech/performance] delivered by me on ______________, 201_ (collectively, the “Performance”).

I grant to Yale University (“Yale”) the right to copy, reproduce, photograph, distribute, transmit, broadcast, exhibit, transcribe, digitize, display, copyright, license, transfer, translate, edit or otherwise use perpetually throughout the world, in whole or in part, in all media now existing and hereinafter developed all or a portion of the recording of such Performance and my name and biographical information, for educational, promotional or other purposes that support Yale’s mission.

Nothing in this Agreement grants to Yale exclusive rights to use the material underlying the Performance (e.g., written lecture, notes or research), and I shall not be precluded by virtue of this Agreement from exploiting publishing or other rights in such underlying material. However, I acknowledge that I have no ownership rights in any recordings, reproductions or other derivative works of the Performance created by Yale.

Release
I release Yale from any claims arising from the use of the Performance including any claims that Yale has defamed me, invaded my privacy, or infringed my moral rights, rights of publicity or copyright. I have no right to approval or inspection or approve and no claims for compensation arising out of or in connection with any use hereunder.

General
I understand and agree that Yale is not obligated to utilize the rights granted in this Agreement and all such rights, permissions and releases herein extend and apply to Yale, its assigns, contractors, licensees, distributors, successors, and agents.

This Agreement shall be governed by the laws of the State of Connecticut without regard to its principles of conflicts of laws, and shall be binding on me, my heirs, assigns, licensees, and legal representatives.

I have read and understood this agreement and I am over the age of 18. This Agreement expresses the complete understanding of the parties.

Name: _____________________________________ Date: ______________

Signature: _________________________________________________________

Address: __________________________________________________________
Attachment 8 – Libel Checklist

Libel is the publication of a false statement that injures the reputation of another. The publisher of a libelous statement can be held liable for such statement because publishers exercise editorial control over content and are considered to "know" what they have published. With regard to possible claims of libel, one should be careful to check statements to determine whether such statements present libel concerns. The following checklist is intended to assist you in making this assessment.

Checklist:

Does the statement identify a person or entity (by name, or otherwise by likeness, description):

If not, then no libel.

If so, is the identified person dead, then generally no cause of action for libel. (Although under the laws of certain states, a deceased person’s estate could bring a claim).

If material identifies a living person, is the person

- a private individual (then greater protection) or
- a public person (then unlikely to be considered libel without proof that the statement was made with actual malice)

If the subject is a private person, would the statement negatively influence a reasonable reader’s opinion of the person or entity identified?

If the statement might reflect badly on the character and/or harm the reputation, would the harm be the result of:

- An explicit statement
- An insinuation
- A sarcastic statement
- A parody or cartoon
- An opinion that implies unstated defamatory facts

Does a defense to a claim of defamation apply to the statement?

- The statement is true
- The statement is a fair report of an official record or proceeding
- The statement is purely an expression of opinion and not an assertion of fact
- The statement is a comment or opinion on a matter of public concern
- No one could reasonably interpret the statement to be an assertion of actual fact about the person or entity
- The statement amounts to general words of abuse of the person without suggesting any specific charge
- The subject of the material consented to the use of the material.
Attachment 9 – Interview Release Agreement

Grant

For consideration which I acknowledge, I consent to the recording of the my statements and grant to Yale University (“Yale”) the right to copy, reproduce, and use all or a portion of the statements, personal experiences, remarks, and recollections, as well as any photographs and documents that I may choose to give to Yale (collectively, the “Interview”) for incorporation in the following work ____________________________ (the “Work”).

I hereby grant and assign to Yale the right to quote or paraphrase all or any portion of the Interview, and to publish, reproduce, distribute, transmit, broadcast, exhibit, digitize, display, translate, modify, edit or otherwise use the Interview as well as my name, [image, likeness and biographical data] in connection with the exploitation and promotion of the Work in all forms and media including advertising and related promotion that Yale may deem appropriate, throughout the world during the full term of copyright of the Work. I understand that Yale will be the sole owner of all copyright and other rights in and to the Work and may assign such rights as necessary.

Release

I hereby release and discharge Yale from any and all claims that may arise regarding the use of the Interview, including without limitation, any claims based on the right of privacy, the right of publicity, copyright, and defamation or any other right. I acknowledge that I have no ownership rights in the Work.

I understand and agree that Yale is not obligated to utilize the rights granted in this Agreement and all such rights, permissions and releases herein extend and apply to Author, Publisher and their assigns, contractors, licensees, distributors, successors, and agents.

I have read and understood this agreement and I am over the age of 18. This agreement expresses the complete understanding of the parties.

Agreed:

By: ________________________________

Name: ________________________________

Date: ________________________________