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### A practical guide to working with copyrighted and open access resources in scholarship

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# A practical guide to working with copyrighted and open access resources in scholarship

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# The face-to-face vs online conference environment

*Question for the audience:*

What differences do you perceive between presenting online vs presenting in a face-to-face conference venue?

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# The basic aim of this webinar

To help you use other people's copyrighted material lawfully in online presentations

- Avoid takedown notices, or, worse still, takedown notices coupled with demands for pecuniary compensation

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# Basic legal information about copyright in this area

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- Is it in copyright?

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## Public Catalog

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**Search for:**

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25 records per page

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Help Search History Titles Start Over

## Public Catalog

Copyright Catalog (1978 to present)  
Search Request: Author = Rowling, J.K.  
Search Results: Displaying 1 through 25 of 76 entries.

◀ previous 1 26 76 next ▶

Search Copyright records:  
<https://www.copyright.gov/>

Resort results by:

#	Name Heading	Author	Full Title
<input type="checkbox"/> [26]	Rowling, J.K.		Harry Potter and the Chamber of Secrets / by J. K. Rowling ; ill. by Mary GrandPre.
<input type="checkbox"/> [27]	Rowling, J.K.		Harry Potter and the chamber of secrets / by J. K. Rowling ; ill. by Mary Grandpre.
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<input type="checkbox"/> [30]	Rowling, J.K.		Harry Potter and the chamber of secrets [by] J. K. Rowling : reproducible activity book.

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# Is it *still* in copyright?

*Remember:*

The register puts you “on notice” that something is copyrighted, but something may be absent from the register and still be copyrighted / in-copyright!

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# The Doctrine of Fair Use

*Question for the audience:*

What do you understand “fair use” to mean?

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# Fair use (generally)



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- (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 of the use upon the potential market for or value of the copyrighted work.

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# Transformative fair use

## The Transformative Factor: The Purpose and Character of Your Use

In a 1994 case, the Supreme Court emphasized this first factor as being an important indicator of fair use. At issue is whether the material has been used to help create something new or merely copied verbatim into another work. When taking portions of copyrighted work, ask yourself the following questions:

- Has the material you have taken from the original work been transformed by adding new expression or meaning?
- Was value added to the original by creating new information, new aesthetics, new insights, and understandings?

In a parody, for example, the parodist transforms the original by holding it up to ridicule. At the same time, a work does not become a parody simply because the author models characters after those found in a famous work.

Purposes such as scholarship, research, or education may also qualify as transformative uses because the work is the subject of review or commentary.

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- **Fair use.** It was a fair use, not an infringement, to reproduce Grateful Dead concert posters within a book. **Important factors:** The Second Circuit focused on the fact that the posters were reduced to thumbnail size and reproduced within the context of a timeline. (*Bill Graham Archives v. Dorling Kindersley Ltd.*, 448 F.3d 605 (2d Cir. 2006).)
- **Fair use.** A TV clipping database made it possible for users to search news broadcasts using keywords, then view a portion of the curated news clip containing those keywords. The court determined that the storage, indexing, excerpting, and reproduction of the clips was a fair use. **Important factors:** The district court emphasized the purpose of the database, which was unique and transformative. The court also dismissed the “very small possible impact” of lost revenues. *Fox News v. TVEYES, Inc.*, 43 F. Supp. 3d 379 (S.D. N.Y. 2014).

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# Distinguishing academic presentations from teaching (for copyright purposes)

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## Copyright Crash Course

TEACH Act

Copyright law provides educators with a separate set of rights in addition to fair use, to display (show) and perform (show or play) others' works in the classroom. These rights are in [Section 110\(1\)](#) of the Copyright Act and apply to any work, regardless of the medium.

The TEACH Act of 2002, expanded the scope of online educators' rights to perform and display works and to make copies integral to such performances and displays, making the rights closer to those we have in face-to-face teaching. But there is still a considerable gap between what the statute authorizes for face-to-face teaching and for online education. For example, as indicated above, an educator may show or perform any work related to the curriculum, regardless of the medium, face-to-face in the classroom. There are no limits and no permissions required. Under 110(2), however, even as revised and expanded by the TEACH Act, the same educator would have to pare down some of those materials to show them to online students. The audiovisual works and dramatic musical works may only be shown as clips -- "reasonable and limited portions".

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# Copyright considerations by format

- Text
  - Articles / books?
  - Data?
  - Tests or survey instruments?
- Images
- Media



An interesting example, making,  
perhaps, an obvious point:

By all means report your findings using copyrighted tests, as long as you don't reproduce the test instruments, themselves! (Advice valid for both publications and presentations)

Example:

Article

## Wechsler Administration and Scoring Errors Made by Graduate Students and School Psychologists

Journal of Psychoeducational Assessment  
2019, Vol. 37(6) 679–691  
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Erika Oak<sup>1</sup> , Kathleen D. Viezel<sup>1</sup>,  
Ron Dumont<sup>1</sup>, and John Willis<sup>2</sup>

### Abstract

Individuals trained in the use of cognitive tests should be able to complete an assessment without making administrative, scoring, or recording errors. However, an examination of 295 Wechsler protocols completed by graduate students and practicing school psychologists revealed that errors are the norm, not the exception. The most common errors included failure to administer sample items, incorrect calculation of raw scores, failure to record responses verbatim, and failure to query. Significant differences were found between specific error frequencies of students and practitioners. Adequate training in administering the Wechsler scales is clearly essential. Based on the outcome of this study, it is recommended that programs training students to administer

Citation: Oak, E., Viezel, K., Dumont, R., & Willis, J. (2019). Wechsler administration and scoring errors made by graduate students and School Psychologists. *Journal of Psychoeducational Assessment*, 37(6), 679–691. <https://doi.org/10.1177/0734282918786355>

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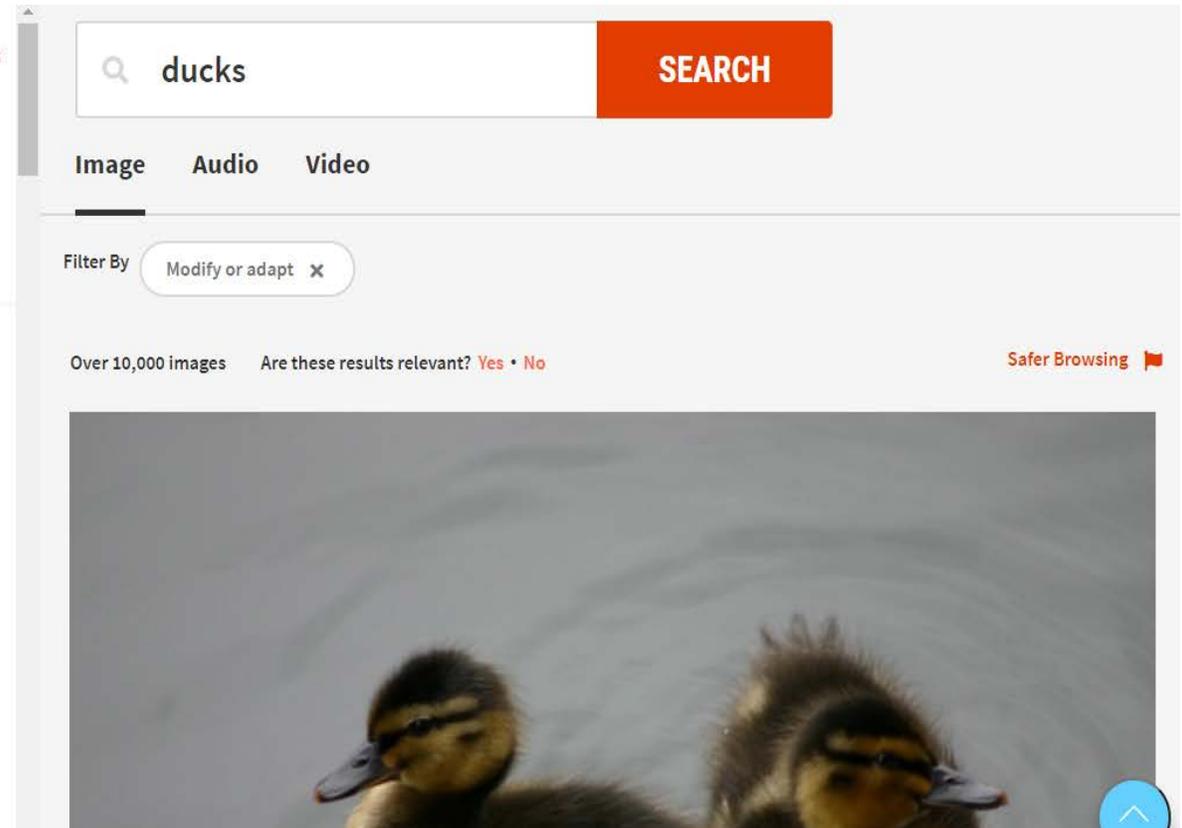
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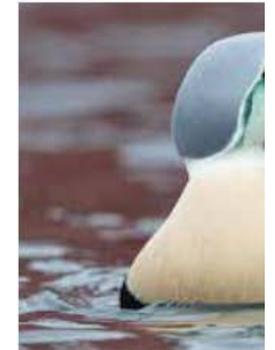
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# Questions?

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