

Code of Best Practices

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Code of Best Practices

This code of best practices is designed to help instructional designers navigate copyright, fair use, Creative Commons, and accessibility when creating instructional materials. As instructional designers, it is important that we understand the legal and ethical responsibilities that come with designing instructional materials. This code serves as a guide to ensure that we respect intellectual property rights, use content legally, and create materials that are accessible to all learners. Additional resources and instructions to support instructional designers are given after each best practice. By following these best practices, reading additional resources, and following instructions and guidelines, instructional designers can enhance the learning experience and be compliant with copyright laws and ethical standards.

Copyright

Prioritize Original Content

A key best practice is to prioritize original content when developing course materials (Johnson, 2006). Start each course by creating or using materials already owned by the client or the instructional designer to avoid copyright issues from the beginning of the process. When planning a course, outline the learning objectives and decide what original resources can be adapted or created to meet the learning objectives for the course. Consult with your client or subject matter expert who may have lecture notes, presentations, or other resources that align with the course's learning objectives. After gathering these resources, consider how they could be adapted to create an engaging learning experience.

Additional Resources:

- Cordiner, S. (2022). 14 ways to protect your intellectual property. Thinkific. Retrieved from <https://www.thinkific.com/blog/intellectual-property-online-courses/>

- Hettinger, E. C. (1989). Justifying Intellectual Property. *Philosophy & Public Affairs*, 18(1), 31–52. <http://www.jstor.org/stable/2265190>
- Johnson, L. (2006). Managing intellectual property for distance learning. Educause Review. Retrieved from <https://er.educause.edu/articles/2006/4/managing-intellectual-property-for-distance-learning>

Utilize Materials from the Public Domain

Another essential best practice is to utilize materials from public domain resources. Public domain materials are not protected by copyright and can be used freely (Johnson, 2006). If an instructional designer needs photographs, videos, visuals, audio, or text that could be hard to create themselves using websites like Creative Commons and Wikimedia Commons can help provide free resources and materials for your course. Even though it is not required by law it is a good practice to always credit the creators of the material used to show respect for the original creator.

Additional Resources:

- Creative Commons. (n.d.). *Home*. Creative Commons. <https://creativecommons.org/>
- Johnson, L. (2006). Managing intellectual property for distance learning. Educause Review. Retrieved from <https://er.educause.edu/articles/2006/4/managing-intellectual-property-for-distance-learning>
- Wikimedia Foundation. (n.d.). *Main page*. Wikimedia Commons. https://commons.wikimedia.org/wiki/Main_Page

Use “Contribution to a Collective” Work Agreement

When collaborating with subject matter experts, use “Contribution to a Collective Work” agreements. These agreements protect both the institution and the subject matter expert by allowing the instructional designer to use materials within a course while the original creator retains their rights to their intellectual property (Johnson, 2006). Instructional designers should develop an agreement that clearly outlines the use, ownership rights, and any limits before incorporating any third party material, and have subject matter experts, copyright holders, and anyone who owns the original assets sign the agreement so that both sides understand the terms of the agreement.

Additional Resources:

- Johnson, L. (2006). Managing intellectual property for distance learning. Educause Review. Retrieved from <https://er.educause.edu/articles/2006/4/managing-intellectual-property-for-distance-learning>

Secure Licenses to use Copyrighted Content

A best practice is to secure any licenses needed for copyrighted content. The copyright holder of the asset should be located. Write a formal request outlining the intended use, duration, and distribution of the material, and be prepared to negotiate terms. It is best to ask for permission to use the copyrighted intellectual property for the “life of the course” (Johnson, 2006). Keeping records of the licenses, contact information, payment details, and expiration dates, are important to ensure there is clear documentation for each licensed piece of content.

Additional Resources:

- Johnson, L. (2006). Managing intellectual property for distance learning. Educause Review. Retrieved from <https://er.educause.edu/articles/2006/4/managing-intellectual-property-for-distance-learning>
- Renner, J. (2015). Intellectual property rights in elearning. eLearning Industry. Retrieved July 8, 2023, from <https://elearningindustry.com/intellectual-property-rights-in-elearning>
It is a best practice to establish clear intellectual property ownership policies.

Outline Ownership with Clients

Instructional designers can help identify who owns what intellectual property, especially for the materials created by subject matter experts (Johnson, 2006). This includes outlining ownership over materials developed during the instructional design process. Having clear intellectual property policies helps avoid misunderstandings and ensures everyone involved knows the expectations for using and sharing materials.

Additional Resources:

- Johnson, L. (2006). Managing intellectual property for distance learning. Educause Review. Retrieved from <https://er.educause.edu/articles/2006/4/managing-intellectual-property-for-distance-learning>

Watermark Content

Watermarking content is a valuable practice for instructional designers to protect their intellectual property. By including a visible watermark like the name or logo of your institution or company into training videos, presentations, or documents, instructional designers can help avoid any unauthorized sharing or use of the content (Cordiner, 2022). This approach helps

discourage misuse and directs viewers back to the original creator or institution even if materials are shared without permission.

Additional Resources:

- Arnold, M., Schmucker, M., & Wolthusen, S. D. (2002). *Techniques and applications of digital watermarking and content protection*. Artech House.
- Cordiner, S. (2022). 14 ways to protect your intellectual property. Thinkific. Retrieved from <https://www.thinkific.com/blog/intellectual-property-online-courses/>
- Kankanhalli, M. S., Ramakrishnan, K. R., & Rajmohan. (1998, September). Content based watermarking of images. In *Proceedings of the sixth ACM international conference on Multimedia* (pp. 61-70).

Conduct Trademark Research

Conducting trademark research when naming courses or programs is an important best practice.

A name that is too similar to another trademark could lead to legal issues. Instructional designers should check trademark databases, such as the United States Patent and Trademark Office, to verify that no similar names are already in use (Cordiner, 2022). They should also search for other platforms to confirm that the chosen name is unique and original.

Additional Resources:

- Cordiner, S. (2022). 14 ways to protect your intellectual property. Thinkific. Retrieved from <https://www.thinkific.com/blog/intellectual-property-online-courses/>
- United States Patent and Trademark Office. (n.d.). *Home page*. U.S. Patent and Trademark Office. <https://www.uspto.gov/>
- Widmaier, U. (2004). Use, Liability, and the Structure of Trademark Law. *Hofstra L. Rev.*, 33, 603.

Fair Use

Conduct Fair Use Assessments

Another useful best practice is to conduct fair use assessments. Fair use allows unlicensed use of copyrighted material, but only under specific conditions (Johnson, 2006). Instructional designers should complete a Fair Use Assessment form to evaluate each use according to four factors: the purpose and character of use, the nature of the copyrighted work, the amount or sustainability of the portion used, and the effect of the use on the market or value of the work (Crews, 2024).

Documenting these assessments can provide a clear reason for using copyrighted content and can be helpful if there are questions about the copyright status of any materials used.

Additional Resources:

- Crews, K. D. (2024). Fair use. Columbia University Libraries. Copyright Advisory Services. Retrieved from <https://copyright.columbia.edu/basics/fair-use.html>
- Johnson, L. (2006). Managing intellectual property for distance learning. Educause Review. Retrieved from <https://er.educause.edu/articles/2006/4/managing-intellectual-property-for-distance-learning>
- Patterson, L. R. (1992). Understanding Fair Use. *Law and Contemporary Problems*, 55(2), 249–266. Retrieved from <https://doi.org/10.2307/1191784>
- Rife, M. C. (2008). “Fair Use,” Copyright Law, and the Composition Teacher. In C. Eisner & M. Vicinus (Eds.), *Originality, Imitation, and Plagiarism: Teaching Writing in the Digital Age* (pp. 145–156). University of Michigan Press. Retrieved from <http://www.jstor.org/stable/j.ctv65sxxk1.16>

Understand the Purpose and Character of Your Use

When using copyrighted material it is important to consider why and how you plan to use it. A key best practice for fair use compliance is creating something new and transformative (Aufderheide & Jaszi, 2018). This means your use should add value by reinterpreting the material or using it in a new way. Using a short film clip in a training module to analyze storytelling techniques would be transformative. Before using any copyrighted material, ask yourself, “Does this use provide new meaning or serve a different purpose from the original?” Always document your reasoning for why the use is transformative in case you have to explain your choices later.

Additional Resources:

- Aufderheide, P., & Jaszi, P. (2018). *Reclaiming fair use: how to put balance back in copyright, second edition*. University of Chicago Press.

Focus on the Nature of the Copyrighted Work

It is a key best practice to be aware of the type of content you are using. Research articles or factual reports are more likely to fall under fair use than creative works like novels, music, or artwork (Aufderheide & Jaszi, 2018). This is because factual content is meant to inform or educate. For example, you can use a graph from a research paper to highlight data trends in your course, but using a song without permission could be a violation of fair use. Choose materials that are factual or educational whenever possible. Limit the use of creative works unless they are essential to your instructional goals and can be justified as fair use.

Additional Resources:

- Aufderheide, P., & Jaszi, P. (2018). *Reclaiming fair use: how to put balance back in copyright, second edition*. University of Chicago Press.

Limit the Amount of Material Used

Fair use encourages using only the amount of a work necessary. Smaller portions are generally safer, especially if they do not include the most significant part of the original work (Aufderheide & Jaszi, 2018). Using a single paragraph from an article for analysis is more understandable than using an entire page and claiming fair use.

Additional Resources:

Aufderheide, P., & Jaszi, P. (2018). *Reclaiming fair use: how to put balance back in copyright, second edition*. University of Chicago Press.

Assess the Market Impact of Your Use

It is important to think about whether your use could negatively affect the copyright owner's ability to profit from their work (Aufderheide & Jaszi, 2018). If your course includes excerpts from a textbook that students would have to purchase it could be seen as harming the market. The same applies to content that directly competes with the original like creating a downloadable resource based on someone else's material.

Additional Resources:

- Aufderheide, P., & Jaszi, P. (2018). *Reclaiming fair use: how to put balance back in copyright, second edition*. University of Chicago Press.

Always Act in Good Faith and Provide Attribution

A key best practice is to always provide attribution for any source used. While attribution alone does not make a use fair, it shows respect for the original creator and signals ethical practices (Aufderheide & Jaszi, 2018). It is important to always credit the original creator by including their name, the title of the work, and a link to the source.

Additional Resources:

- Aufderheide, P., & Jaszi, P. (2018). *Reclaiming fair use: how to put balance back in copyright, second edition*. University of Chicago Press.

Creative Commons

Use Creative Commons Resources

Creative Commons licenses allow creators to share their work under specific terms, making it easier to use legally (Copyright & Creativity, 2020). These licenses often specify whether a work can be modified, used commercially, or shared without restrictions. A photo with a CC BY license allows you to use it freely as long as you provide proper attribution. It is important to always verify the specific CC license terms before using any content to ensure you comply with its conditions.

Additional Resources:

- eLearning Team – Seattle Central College. (2020). OER and intellectual property.
<https://www.youtube.com/watch?v=PAcUVBeB6H0>

Choose the Right Creative Commons License

Each Creative Commons license has different conditions, ranging from very open to more restrictive. Some allow modifications, while others prohibit them. It is important to be aware of the six main CC licenses and their conditions (Seattle Central College, 2020). If you plan to use or modify CC-licensed content, double-check whether the license allows for these changes. Look for the license information directly on the website or attached to the material itself.

Additional Resources:

- Seattle Central College. (2020). OER and intellectual property.
<https://www.youtube.com/watch?v=PAcUVBeB6H0>

- Copyright & Creativity. (2020). C&C C.1 Using copyrighted works in our own creations – fair use, creative commons, permission.

<https://www.youtube.com/watch?v=1R5QccMTDMs>

- Valenza, J. (n.d.). A copyright friendly toolkit.

<https://www.smore.com/f677-a-copyright-friendly-toolkit>

Attribution Is a Requirement for Creative Commons Content

Always giving attribution to your sources is an important practice in instructional design. Most Creative Commons licenses require that you give credit to the original creator (Seattle Central College, 2020). This attribution typically includes the creator’s name, the title of the work, and the type of license. Including this information ensures transparency and shows respect for the creator’s work. When using CC-licensed materials, include an attribution statement like: “Photo by [Author’s Name], licensed under [CC License Type].”

Additional Resources:

- Creative Commons. (n.d.). *Recommended practices for attribution*. Creative Commons Wiki. Retrieved November 25, 2024, from

https://wiki.creativecommons.org/wiki/Recommended_practices_for_attribution

Accessibility

Use Universal Design for Learning (UDL)

Universal Design for Learning (UDL) is a framework for designing learning materials that are accessible and enable all individuals to learn. UDL acknowledges that learners can differ in how they navigate a learning environment, approach the learning process, and express what they know (KnowledgeOne, 2023). Use UDL principles to ensure all learners can access, engage with, and demonstrate their knowledge. Provide multiple options for content delivery through

videos, written text, and diagrams. Incorporate captions and text to speech to eliminate barriers to learning. Regularly review materials to make sure the materials align with UDL principles. Give learners options to complete projects through essays, videos, or presentations. By following UDL principles learning materials can become adaptable, inclusive, and effective for all learners.

Additional Resources:

- CAST (2024). Universal design for learning guidelines version 3.0. Retrieved from <https://udlguidelines.cast.org>
- KnowledgeOne. (2023). Universal design for learning. Retrieved July 10, 2023, from <https://www.youtube.com/watch?v=N-OzIBzSEmU>

Make Learning Relevant

Relevant materials keep learners motivated. Start by conducting surveys or needs assessments to understand learners' interests and goals. Use this information to align course content with real world applications. Offer choices in how learners engage with materials. Giving learners options allows them to choose what resonates most with their learning style. When learners see how course content connects to their personal or professional goals their engagement and commitment increase. UDL recognizes that learners must be able to bring their authentic selves to the learning environment and connect with what matters most to them (CAST, 2024). This means recognizing and valuing learners' multiple and intersecting identities.

Additional Resources:

- CAST, Inc. (2024). *Action & expression*. UDL Guidelines. <https://udlguidelines.cast.org/action-expression/>

Design Representative Learning Materials

Presenting content in multiple formats ensures all learners can access it effectively. Presenting content in multiple formats can enhance engagement and make content more accessible to learners with different learning preferences and abilities (CAST, 2024). Combine text based explanations, narrated videos, and visual diagrams to accommodate diverse learning preferences. A lesson could include a written summary, a video demonstration, and an infographic. Use captions for videos, screen reader compatible documents, and alt text for images. Offer downloadable transcripts or larger font versions for learners with specific needs. By having a variety of content formats, you can create inclusive materials that reach learners with different strengths and abilities. Provide clear definitions, explanations, and alternative representations for complex vocabulary, symbols, and language structures.

Additional Resources:

- CAST, Inc. (2024). *Representation*. UDL Guidelines.

<https://udlguidelines.cast.org/representation/>

Allow Different Options for Action and Expression

A key UDL principle includes allowing different options of action and expression. Giving flexibility to learners empowers them to showcase their strengths (CAST, 2024). Instead of requiring written essays, allow learners to choose between reports, videos, or infographics. Ensure that learners have access to the tools and technologies they need to engage with the content and express themselves effectively. Provide opportunities for learners to practice and develop their skills in using different tools and media for communication and expression.

Providing options for action and expression reduces barriers and ensures learners can demonstrate understanding in ways that work best for them.

Additional Resources:

- CAST, Inc. (2024). *Engagement*. UDL Guidelines.

<https://udlguidelines.cast.org/engagement/>

Create a Welcoming and Safe Learning Environment

A supportive learning environment promotes collaboration and inclusivity. Creating a positive class climate is important to learners and makes them feel valued, respected, and safe to participate (Center for Universal Design in Education, 2020). It begins with a welcoming atmosphere where all students are encouraged to contribute. This can be achieved by learning students' names, encouraging diverse perspectives, and modeling respectful behavior. Including a clear statement on expected behavior in the syllabus helps set standards for respectful interactions. It's also important to avoid stereotyping by treating students as individuals and refraining from making assumptions based on group affiliation. Tailoring instruction and support to meet the needs and performance of each learner, rather than preconceived notions, helps promote an inclusive environment. Being approachable and available to students fosters a sense of support.

Additional Resources:

- Center for Universal Design in Education. (2020). Equal access: Universal design of instruction. Retrieved July 8, 2023, from

<https://www.washington.edu/accesscomputing/equal-access-universal-design-instruction>

Use Different Delivery Methods

To create accessible materials it is essential to use a variety of delivery methods that connect learning to real world contexts and address varying abilities, interests, and learning preferences. Making content relevant by linking lessons to real world scenarios and using examples that reflect learners' diverse backgrounds can significantly increase engagement (CAST, 2024). Selecting flexible curriculum materials that are organized, highlight key points, and offer support like glossaries and practice exercises ensures accessibility for learners with different levels of understanding. Providing cognitive supports like outlines, summaries, and organizers help learners organize information more effectively. By offering multiple ways to learn you allow learners to interact with the material in different ways. Clear, concise instructions in both written and spoken form are important for making sure learners understand what they are being asked and techniques like asking learners to summarize or repeat instructions can reinforce understanding. By incorporating these different delivery methods, you can create an inclusive learning environment that supports a broad spectrum of learner needs.

Additional Resources:

- CAST (2024). Universal design for learning guidelines version 3.0. Retrieved from <https://udlguidelines.cast.org>

Make Text Readable and Accessible

To make text content more readable and accessible, it is essential to follow several key principles outlined in the WCAG guidelines. One important strategy is using clear and concise language. Avoid jargon, overly technical terms, and complex sentence structures. When introducing unfamiliar terms or concepts, define them clearly to ensure all learners can

understand. Structuring content logically also plays a crucial role in readability. Use headings, subheadings, bullet points, and numbered lists to break the content into manageable sections. This creates a visual hierarchy that helps learners quickly scan and find the information they need. Another critical consideration is adjusting text size and spacing. Allow learners to customize text size and line spacing to improve readability. According to WCAG guidelines, text should be resizable up to 200% without loss of content or functionality. Additionally, optimizing font choice and color contrast can significantly enhance the accessibility of text. Use simple, easy to read fonts, and ensure there is contrast between the text and background to accommodate learners with visual impairments. By implementing these strategies, you can make your content more accessible and improve the overall learning experience for all students.

Additional Resources:

- CAST, Inc. (2024). *Action & expression*. UDL Guidelines.
<https://udlguidelines.cast.org/action-expression/>
- Web Content Accessibility Guide (WCAG) 2.0: <https://www.w3.org/TR/WCAG20/>

Conclusion

The code of best practices serves as a guide for instructional designers by helping them navigate the legal and ethical considerations involved in creating educational material. By following these best practices, designers can make informed decisions regarding copyright, fair use, Creative Commons, and accessibility. This approach ensures that the materials are legally compliant and inclusive for all learners. Adopting these benefits both instructional designers and learners.

References

- Arnold, M., Schmucker, M., & Wolthusen, S. D. (2002). *Techniques and applications of digital watermarking and content protection*. Artech House.
- Aufderheide, P., & Jaszi, P. (2018). *Reclaiming fair use: how to put balance back in copyright, second edition*. University of Chicago Press.
- CAST, Inc. (2024). *Action & expression*. UDL Guidelines. <https://udlguidelines.cast.org/action-expression/>
- CAST, Inc. (2024). *Engagement*. UDL Guidelines. <https://udlguidelines.cast.org/engagement/>
- CAST, Inc. (2024). *Representation*. UDL Guidelines. <https://udlguidelines.cast.org/representation/>
- CAST (2024). Universal design for learning guidelines version 3.0. Retrieved from <https://udlguidelines.cast.org>
- Center for Universal Design in Education. (2020). Equal access: Universal design of instruction. <https://www.washington.edu/accesscomputing/equal-access-universal-design-instruction>
- Cordiner, S. (2022). 14 ways to protect your intellectual property. Thinkific. Retrieved from <https://www.thinkific.com/blog/intellectual-property-online-courses/>
- Copyright & Creativity. (2020). C&C C.1 Using copyrighted works in our own creations – fair use, creative commons, permission. <https://www.youtube.com/watch?v=1R5QccMTDMs>
- Creative Commons. (n.d.). *Home*. Creative Commons. <https://creativecommons.org/>

Creative Commons. (n.d.). *Recommended practices for attribution*. Creative Commons Wiki.

https://wiki.creativecommons.org/wiki/Recommended_practices_for_attribution

Crews, K. D. (2024). Fair use. Columbia University Libraries. Copyright Advisory Services.

Retrieved from <https://copyright.columbia.edu/basics/fair-use.html>

eLearning Team – Seattle Central College. (2020). OER and intellectual property.

<https://www.youtube.com/watch?v=PAcUVBeB6H0>

Hettinger, E. C. (1989). Justifying Intellectual Property. *Philosophy & Public Affairs*, 18(1),

31–52. <http://www.jstor.org/stable/2265190>

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<https://er.educause.edu/articles/2006/4/managing-intellectual-property-for-distance-learning>

Kankanhalli, M. S., Ramakrishnan, K. R., & Rajmohan. (1998, September). Content based

watermarking of images. In *Proceedings of the sixth ACM international conference on Multimedia* (pp. 61-70).

KnowledgeOne. (2023). Universal design for learning. Retrieved July 10, 2023, from

<https://www.youtube.com/watch?v=N-OzIBzSEmU>

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249–266. Retrieved from <https://doi.org/10.2307/1191784>

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Rife, M. C. (2008). “Fair Use,” Copyright Law, and the Composition Teacher. In C. Eisner & M.

Vicinus (Eds.), *Originality, Imitation, and Plagiarism: Teaching Writing in the Digital*

Age (pp. 145–156). University of Michigan Press. Retrieved from
<http://www.jstor.org/stable/j.ctv65sxxk1.16>

Seattle Central College. (2020). OER and intellectual property.
<https://www.youtube.com/watch?v=PAcUVBeB6H>

Trillium Creative Solutions. (2018). Designing for accessibility: Overview. Retrieved July 8,
2023, from <https://www.youtube.com/watch?v=dJfhi2P60Xo>

United States Patent and Trademark Office. (n.d.). *Home page*. U.S. Patent and Trademark
Office. <https://www.uspto.gov/>

Valenza, J. (n.d.). A copyright friendly toolkit.
<https://www.smore.com/f677-a-copyright-friendly-toolkit>

Web Content Accessibility Guide (WCAG) 2.0: <https://www.w3.org/TR/WCAG20/>

Widmaier, U. (2004). Use, Liability, and the Structure of Trademark Law. *Hofstra L. Rev.*, 33,
603.

Wikimedia Foundation. (n.d.). *Main page*. Wikimedia Commons.
https://commons.wikimedia.org/wiki/Main_Page