

Copyright Compliance Guidelines for Dominican University of California

These guidelines will be especially useful to faculty in their instructional use of copyrighted materials. However, the guidelines apply to anyone associated with the University.

Archbishop Alemany Library of Dominican University of California, hereinafter referred to as Library, presents its Policy regarding the use of copyrighted materials to comply with the United States Copyright Law of 1976, as amended, (Title 17, United States Code, hereinafter, the "[Copyright Act](#)."), the copyright provisions found in the Faculty Handbook, the Library's Mission Statement, and all applicable copyright laws, including the TEACH Act <http://www.copyright.com/Services/copyrightoncampus/basics/teach.asp>

Accordingly, all students, faculty, adjunct faculty, visiting faculty, researchers, and staff of Dominican University of California, as well as members of the public who use the print and electronic resources at the Library, are required to follow these policy guidelines. The Archbishop Alemany Library of Dominican University Copyright Policy provides a summary of provisions within Title 17, United States Code, as they pertain to copying and other reproduction uses in the Library by students, faculty, adjunct faculty, visiting faculty, researchers, and staff, of Dominican University of California, as well as members of the public.

Purpose of the Policy: The purpose of this policy is to assist students, faculty, adjunct faculty, visiting faculty, researchers, and staff of Dominican University of California, as well as members of the public, to use copyrighted materials appropriately, to comply with all copyright laws in order to avoid liability for copyright infringement, and to provide clarification when copyright permission is required to use copyright material.

Restrictions in this Policy Statement refer only to copyrighted materials. Materials may be copied freely if they are within the public domain, as well as materials which are otherwise free of any copyright prohibitions. The discussion of materials within the public domain and materials exempt from copyright restrictions are discussed below.

Because a copyright notice is not required for copyright protection of works published on or after March 1, 1989, most works (except those authored by the United States Government) should be **presumed** [emphasis added] to be copyright protected. Works published prior to March 1, 1989, generally require a copyright notice to be protected. The [Copyright Office Circular 22](#) explains how to determine the copyright status of a work <http://www.copyright.gov/circs/circ22.pdf>

Anyone seeking to copy or reproduce by any means copyrighted software on computing equipment in the Library's computing equipment must comply with the Copyright Act. Furthermore, students, faculty, staff, and members of the public are forbidden to use unauthorized copies of software on the Library's computers. Section 117 of the Copyright Act outlines the rights, duties, and obligations relating to copying of copyrighted software.

The Library's Policy on Use of Copyrighted Material, application of the Four Factor Test of Section 107 of the Copyright Act, all applicable copyright laws, including the TEACH act,

will help you determine whether you should use the copyrighted material or whether you should first seek permission from the copyright owner. Students, faculty, adjunct faculty, visiting faculty, researchers, and staff of Dominican University of California, as well as members of the public, whose use of copyrighted materials infringes rights of the copyright owner and otherwise violates the Copyright Act, Title 17 of the United States Code, will be subject to appropriate disciplinary action, civil remedies and criminal penalties provided by state and federal laws.

DISCLAIMER

The information presented in the Archbishop Alemany Library Policy on the Use of Copyright Material is intended only for general information. It is not intended to substitute for legal advice. The staff and librarians at Archbishop Alemany Library do not accept liability with respect to any claim, proceeding, loss or damage arising from any faculty member or student's use of copyrighted material, uses of the Library Policy on Copyright Law, and other provisions relating to copyright law. An attorney should be consulted for clarification of any issues pertaining to uses of copyrighted materials and other matters related to copyright law. An attorney should also be consulted, whenever questions arising from the use of copyrighted materials, or which require legal interpretation or analysis of any copyright statutory provisions, including but not limited to Title 17 United States Code, case law decisions, Conference on Fair Use Guidelines, or any other matters regarding copyright usage, in which there is doubt.

What is copyright?

Copyright is a form of protection provided by the laws of the United States (Title 17, U. S. C.) to the authors of "original works of authorship." A work is copyrighted the moment it is fixed in a tangible form of expression. The copyright law grants exclusive rights to authors, creators and publishers, to reproduce all or part of the work, distribute copies, prepare derivative (new) versions, perform and display the work publicly. Copyright protection covers both the published and unpublished works. The fact that a previously published work is out of print does not affect its copyright. Under this rubric, even student papers enjoy copyright protection.

To read the entire copyright statute, chapters 1 through 13, please consult Cornell Law School Legal Information Institute, Title 17 U. S. Code
http://www.law.cornell.edu/uscode/html/uscode17/usc_sup_01_17.html.

The Office of the Law Revision Counsel, U. S. House of Representatives, Title 17 Copyrights, beginning with Chapter 1 Subject Matter and Scope of Copyrights is also an excellent source .
[http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t17t20+3+44++%28Fair%20Use%](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t17t20+3+44++%28Fair%20Use%20)

Copyright Subject Matter

§102, et seq. of Title 17 United States code defines the subject matter that is protected by copyright law. This includes original works by the author which are reduced to tangible form such as literary works, musical works including any accompanying words, dramatic works, including any accompanying music; pantomimes and choreographic works; pictorial, graphic,

and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works.

Copyright protection does not extend to ideas, procedures, processes, systems, methods of operation, concepts, principles, or discoveries, United States Government works, titles, names, slogans, familiar symbols or designs, irrespective of the form in which they are described, presented, or explained.

Academic institutions, City College of San Francisco for example, suggest that the following language be added to course syllabi and Web sites: "The materials in this course are only for the use of students enrolled in the course for purposes associated with the course. Copyrighted course materials may not be retained or further disseminated."

Subject Matter of Copyright, §102 et. seq.

http://www.law.cornell.edu/uscode/html/uscode17/usc_sec_17_00000102----000-.html

Fair Use of Copyrighted Materials

<http://www.utsystem.edu/ogc/intellectualproperty/copypol2.htm>

City College of San Francisco Copyright Information

<http://www.ccsf.edu/Info/>

§103 Subject matter of copyright: Compilations and derivative works

http://www.law.cornell.edu/uscode/html/uscode17/usc_sec_17_00000103----000-.html

§ 104. Subject matter of copyright: National origin

http://www.law.cornell.edu/uscode/html/uscode17/usc_sec_17_00000104----000-.html

U. S. Copyright Office, What is not Protected by Copyright?

<http://www.copyright.gov/circs/circ1.html>

Copyright Owner's Exclusive Rights to Copyrighted Works

Title 17 United States Code §106 provides exclusive rights to the copyright owner. These rights include the right to 1) Make a copy (reproduce), 2) Use a work as the basis for a new work (create a derivative work), 3) Electronically distribute or publish copies (distribute a work), 4) Publicly perform music, prose, poetry, a drama, or play a video or audio tape or a CD-ROM, etc. (publicly perform a work), 5) Publicly display an image on a computer screen or otherwise (publicly display a work). Permission must be sought from the copyright owner prior to using copyrighted material, unless the material is in the public domain, is not a subject of copyright and therefore not protected by copyright law, or comes within any of the exemptions provided in Title 17 United States Code.

Cornell Law School Legal Information Institute U. S. Code Collection

http://www.law.cornell.edu/uscode/html/uscode17/usc_sec_17_00000106----000-.html

Copyright Ownership: Who Owns What? Stanford University
[http://fairuse.stanford.edu/Copyright and Fair Use Overview/chapter0/0-c.html](http://fairuse.stanford.edu/Copyright%20and%20Fair%20Use%20Overview/chapter0/0-c.html)

The Duration of Copyright Protection

If a work was created after January 1, 1978, the duration of a copyright, for most works, is the life of the author plus 70 years. For works created before January 1, 1978, duration is for 28 years plus an automatic extension of 67 years. See 17 USC, Chapter 3, § 301, et seq.
http://www.law.cornell.edu/uscode/html/uscode17/usc_sup_01_17_10_3.html

The Public Domain

When materials pass into the public domain they are no longer protected by copyright law and may be used freely for commercial and non-commercial purposes. There is no requirement to seek permission from the former copyright owner. However, there are confusing rules when works pass into the public domain and it is important to become acquainted with them. Generally speaking,

Works of any type which were published on or before December 31, 1922 are now in the public domain.

Works which were published between January 1, 1923 and December 31, 1978 (inclusive) are protected for a period of 95 years from the date of publication, with the proper notice.

Works which were published between the years 1923 and December 31, 1963 had a non-automatic "renewal term." However, if the copyright owner did not renew the work, the original term of 28 years of protection would now be expired, placing these works into the public domain.

Works created before December 31, 1978 which were never published now receive copyright protection for the life of the author plus 70 years, or until December 31, 2002.

Term of protection has changed:

After 1978 a change occurred regarding the term in which copyright protection is measured, making the date of publication irrelevant. The term now runs for 70 years from the date of the author's death (referred to as the "life of the author" plus 70 years). Today works are protected whether or not they are published. (excerpts taken from Fair Use of Copyrighted Materials
<http://www.utsystem.edu/ogc/intellectualproperty/copypol2.htm>

For a thorough itemization of specific types of works, copyright terms, and what was in the public domain in the U. S. as of January 1, 2006, consult "Copyright Term and the Public Domain in the United States 1 January 2006" at
http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm

Consult Stanford University for a thorough explanation on public domain and related issues
http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter8/index.html

Gasaway, Lolly. When Works Pass Into the Public Domain. University of North Carolina
<http://www.unc.edu/~unclng/public-d.htm>

Fair Use

Fair use is the legal principle found in Title 17, Chapter 1, § 107 of the U. S. Code, which provides certain limitations on the exclusive rights of copyright holders. Fair use allows use of copyrighted materials for educational purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research without permission from the copyright owner. Do not assume, however, that a nonprofit, educational use or giving credit for the source of the work, or limiting access to materials to students in your class creates fair use. If the purported use does not satisfy all four elements of the Fair Use test, then permission from the copyright owner must be sought prior to using the material. Failure to seek permission may result in a charge of copyright infringement and subject to criminal and/or civil penalties.

In applying the Fair Use Test to specific instances, a threshold question the user should ask is: Whether the use is for non-profit or commercial purposes? The University of Texas provides an excellent explanation and description regarding the application of Fair Use located at <http://www.utsystem.edu/ogc/intellectualproperty/copypol2.htm> in which each of the four elements of the Fair Use Doctrine is thoroughly analyzed. The Copyright Clearance Center renders a checklist of specific examples of uses which students, faculty, staff, and others, may find useful in determining whether their use of copyrighted materials falls within the Fair Use Doctrine. http://www.copyright.com/Services/copyrighoncampus/basics/fairuse_list.asp

Analysis of the Four Factors in Fair Use

In determining whether the use made of a work in any particular case is a fair use, four factors must be considered:

The four factors of fair use as cited by the Office of The Law Revision Counsel of the U. S. House of Representatives are

- (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.

The fact that a work is unpublished shall not itself bar a finding of *fair use* if such finding is made upon consideration of all the above factors.

Adapted from the Law Revision Counsel U. S. House of Representatives Title 17 Copyrights, Chapter 1 Subject Matter and Scope of Copyrights Sec. **107**. Limitations on exclusive rights: Fair use. [http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t17t20+12+44++%28Fair%20Use%](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t17t20+12+44++%28Fair%20Use%20)

Step-by-Step Application of the Fair Use Doctrine in the Classroom

1. The Purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purpose

Applying the first factor of the fair use doctrine requires an examination of the purpose and character of the use, which includes whether such use is of a commercial nature or is for nonprofit educational purposes (17 USC Sec. 107, Office of the Law Revision Counsel, U. S. House of Representatives). For example, instructors teaching in a non-profit academic setting such as Dominican University of California are allowed to use printed materials in face-to-face classroom use as long as the printed material meets the requirements of the curriculum. No direct or indirect charge shall be imposed upon students for copies.

Materials must be placed on reserve only at the specific request of the instructor; students should not be charged specifically to consult the works, and no person or unit at Dominican University should benefit monetarily from the use of the material.

For instructional purposes, instructors may copy portions of printed material under fair use, but under no circumstances are they permitted to copy entire works.

2. The nature of the copyrighted work

Portions of copyrighted work may be used in the classroom as long they are appropriate to the course's educational objective; materials placed on reserve should be relevant to the objectives of the course;

Reproductions of highly creative works, such as novels, short stories, poetry, modern art images, and other such materials, are generally inappropriate unless they are the main subject of academic study.

Uses of consumable materials should be carefully scrutinized by the instructor. There should be no copying of, or from works intended to be "consumable" in the course of study or teaching. These include workbooks, exercises, standardized tests, test booklets and answer sheets, and similar materials. These types of materials are marketed specifically for students and are meant to be used and replaced regularly and not routinely copied.

3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole

Reproductions will generally be limited to brief works or brief excerpts from larger works; the amount of work placed on reserve must be related directly to the educational objectives of the course.

4. The effect of the use on the potential market for or value of the copyrighted work

In deciding whether to photocopy copyrighted materials, the instructor should consider whether photocopying will harm the market or sale of the copyrighted material. The instructor should also consider whether copyrighted materials are reasonably available and affordable for students to purchase, either as a book, coursepack or other format. Classroom use of copyrighted materials should include a citation to the original source of publication and a notice of copyright.

Adapted, in part, from the “Classroom Handouts and Copyright at IUPUI,” Copyright Management Center, Indiana University-Purdue University-Indianapolis
<http://www.copyright.iupui.edu/classroom.htm>

For specific examples illustrating the application of Fair Use in academic institutions please consult Part II of the *Regents Guide to Understanding Copyright and Educational Fair Use*
<http://www.usg.edu/legal/copyright/#part2>.

Application of Fair Use Standards to Library Reserve Materials

Fair use analysis, similar to the fair use analysis described in *The Application of the Fair Use Doctrine in the Classroom*, is required when placing materials on library reserve.

- 1. Purpose of the Use:** After the instructor has made a specific request, materials placed on reserve must serve “specified educational programs;” no one should be charged a fee to view the reserved materials; and persons or departmental units are forbidden to receive any monetary benefit from their use.
- 2. Nature of the Work:** Materials placed on reserve must have a direct bearing on the “educational objectives” of a specific course, and only portions of the material which are directly relevant to that educational objective are to be placed on reserve. So-called “highly creative works,” such as chapters from novels, poetry, and video tapes of television shows which are reproduced are appropriate only if “they are the main subject of academic study.”
- 3. Amount of the Work:** Reproductions must be limited to “brief works or brief excerpts from larger works.” Similar to the requirements found in Purpose of the Use and Nature of the Work, materials placed on reserve must relate directly to the “educational objectives of the course.”
- 4. Effect of the Use on the Market for the Original:** The instructor must secure permission from the copyright owner when repeatedly placing the same material on reserve, and reserve materials should contain a “citation to the original source of publication” and a notice of copyright. Unless the materials are produced from lawfully obtained copies, they should not be on reserve. Materials that can be readily obtained from the “campus bookstore or other customary outlet” should not be placed on reserve.

Adapted from University of San Francisco Fair Use and Printed Materials
<http://www.usfca.edu/library/copyright/print.html>. Consult the Copyright Management Center
 Indiana University Purdue University Indianapolis for Common Scenarios of Fair Use Issues:
 Posting Materials on Course Management Systems
<http://www.copyright.iupui.edu/fuscenarios.htm>

For a discussion on electronic reserves, please see Santa Clara University, *Fair Use in the Electronic Age*, which describes specific uses of copyrighted materials in electronic reserves.
<http://www.scu.edu/copyright/faculty/fairuse.html>

Fair Use Application to Electronic Reserves

The instructor must apply a fair use analysis when seeking to place print and other materials on an electronic delivery system. Copyright Management Center Indiana University Purdue University Indianapolis in its Introduction at <http://www.copyright.iupui.edu/ereserves.htm> gives a brief description of the current copyright law in this area and provides instructors with a step-by-step approach to fair use. The copyright principles enunciated in this section refer to all academic institutions. Dominican University employs Blackboard, rather than ERROL, as its electronic delivery system. See Appendix II for Blackboard Copyright Guidelines

Coursepacks and Copyright Law in an Academic Setting

Two case decisions, *Basic Books Inc. v. Kinko's Graphics Corp.*, 758 F.Supp. 1522 (S.D.) N.Y. 1991 and *Princeton Univ. v. Michigan Document Servs.*, 99 F.3d 1381 (6th Cir. 1996), established the legal precedent that permission must be obtained prior to reproducing copyrighted materials for an academic coursepack.

The Copyright Clearance Center contains a brief definition and description of coursepacks, emphasizing the need for instructors to seek permission prior to circulating coursepacks for classroom use. Please refer to
<http://www.copyright.com/Services/copyrighthoncampus/content/coursepacks.asp>

Stanford University provides an excellent discussion on coursepacks at
http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter7/7-a.html

Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions With Respect to Books and Periodicals

The following rules are not part of copyright statutes. Rather, they are guidelines that publishers and the academic community have established to provide educational fair use guidelines. For a more comprehensive treatment on the Educational Uses of Non-Coursepack Materials, please consult Stanford University's Web site
http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter7/7-b.html

Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions With Respect To Books And Periodicals at <http://www.cni.org/docs/info.policies/NACS.html> concerns the requirements regarding duplication of multiple copies for classroom use. They include the following:

For example, a single copy which is not part of a coursepack, may be made of any of the following by or for an instructor at his or her request:

A single chapter in a book

A single article from a periodical or newspaper;

A short story, short essay, or short poem, whether or not from a collective work;

One chart, diagram, drawing, graph, cartoon or picture from a book, periodical, or newspaper.

Multiple copies (not to exceed in any event more than one copy per pupil in a course) for classroom use or discussion may be made by or for the teacher giving the course provided that:

A. The copying meets the tests of brevity and spontaneity as defined below; and,

B. Meets the cumulative effect that as defined below; and,

C. Each copy includes a notice of copyright, and

D. No more than copy per student; and

E. No charge to the student beyond the recovery of photocopy costs; and

F. Distribution of the same photocopied material may not occur every semester.

Under the guidelines the following are prohibited:

A. Copying shall not be used to create or to replace or substitute for anthologies, compilations, or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or are reproduced and used separately.

B. There shall be no copying of or from works intended to be "consumable" in the course of study or teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable materials.

C. Copying shall not:

1. Substitute for the purchase of books, publisher's reprints or periodicals;

2. Be directed by higher authority;
3. Be repeated with respect to the same item by the same teacher from term to term.

Adapted from the Coalition of Networked Information

<http://www.cni.org/docs/info.policies/NACS.html>. Definitions for brevity, spontaneity, and cumulative effect are located at <http://www.cni.org/docs/info.policies/NACS.html>

NOTE: All copies distributed to students must have a complete citation and notice of copyright on the first page. The Circulation Desk in the Library has a “Notice of Copyright” stamp.

There are other guidelines which have not been approved by publishers and the academic community but are proposals regarding the educational fair use of digital copying, proposed guidelines for using digitized images in lectures, scholarly presentations or publications, and proposed guidelines for students or instructors preparing multimedia works. Stanford University at [http://fairuse.stanford.edu/Copyright and Fair Use Overview/chapter7/7-c.html](http://fairuse.stanford.edu/Copyright%20and%20Fair%20Use%20Overview/chapter7/7-c.html) is a great resource to consult.

Repetitive Copying

Copying of the same material by the same instructor from semester to semester, without explicit permission is not fair use. It is recommended that prior permission or copyright clearance be obtained for any materials used more than once. Adapted from the Copyright Guide for Faculty, Cardinal Stritch University <http://newlibrary.stritch.edu/guides/fac-copyright.pdf>

For a discussion on photocopying by students, please refer to the Copyright Clearance section on Photocopies <http://www.copyright.com/Services/copyrightoncampus/content/default.asp>

Unpublished Works

Permission must be obtained from owners of unpublished works in order to copy from them. The copyright law gives automatic copyright protection to unpublished works from the point of their creation through the author’s lifetime plus seventy years. If you must obtain permission to reproduce copyrighted materials, a sample copyright permission letter may be located at the Copyright Management Center Indiana University Purdue University Indianapolis at http://copyright.iupui.edu/_permitintro.htm The following model sample letter was prepared by the Copyright Management Center Prepared and may be accessed at <http://copyright.iupui.edu/pgeneral.htm>

Reproduction by Libraries and Archives

Another limitation on the copyright owner’s exclusive rights is found in § 108, Title 17 USC. This section, Reproduction by Libraries and Archives, permits libraries and archives to make reproductions without having to consult the copyright owner for permission and having to pay the copyright owner to make reproductions.

In order to qualify for the exception, Libraries and Archives must meet all of the following qualifications:

1. Library or archive is open to the public or open to “persons researching the specialized area in the library collection.”
2. Limit copying to “no more than a single reproduction of a given work.”
3. Receive no monetary benefit from the reproduction.
4. Insert a notice of copyright. If there is no notice of copyright on the work being copied, insert a notice that the work may be protected by copyright law.

Adapted from the Copyright Clearance Center “Copyright Basics: Fair Use”
http://www.copyright.com/Services/copyrighthoncampus/basics/fairuse_archive.asp

Stanford University provides a detailed explanation of reproduction privileges in the section “Library Photocopying ” of Copyright & Fair Use
http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter7/7-d.html

For a discussion of public performances and displays in libraries, consult the Copyright Management Center http://www.copyright.iupui.edu/library_issues.htm

Audio Recordings & Music

Fairfield University Web site <http://www.fairfield.edu/x5362.xml>. For specific uses of audio recordings and music in the classroom, in classroom uses which employ technology such as WebCT, distance education, and library reserve.

Images

Fairfield University <http://www.fairfield.edu/x5369.xml>. The term images refers to “photographs, slides, illustrations, web images, charts or graphs and designs” in specific environments such as classroom use, classrooms using technology or Web enhanced varieties, distance education, and library reserve use.

Images in Prints & Photographs http://www.loc.gov/rr/print/195_copr.html

Movies & Videos

Face-to-face classroom instruction using movies and videos are permissible provided that their use complies with the educational objectives of the class. Several specific situations are provided on the Fairfield University Web site <http://www.fairfield.edu/x5376.xml> and should be consulted by instructors in non-profit academic institutions.

Multimedia and Fair Use

Multimedia involves a variety of techniques in which several types of media are employed to express or communicate ideas. For example, there is art, music, digitized images, and other types, which constitute forms of multimedia. An excellent description on The Proposed Educational Guidelines on Fair Use regarding the use of thumbnail images, the use of digitized images in lectures, scholarly presentations or publications, is found on the Stanford University Web site at [http://fairuse.stanford.edu/Copyright and Fair Use Overview/chapter7/7-c.html](http://fairuse.stanford.edu/Copyright%20and%20Fair%20Use%20Overview/chapter7/7-c.html)

The Proposed Guidelines regarding the preparation of multimedia projects by students and instructors is also available at

[http://fairuse.stanford.edu/Copyright and Fair Use Overview/chapter7/7-c.html](http://fairuse.stanford.edu/Copyright%20and%20Fair%20Use%20Overview/chapter7/7-c.html)

Copyright and Your Rights

<http://www.etown.edu/docs/OSA/Copyrights%20and%20Your%20Right1.pdf>

Fair Use Guidelines for Educational Multimedia, University of Texas

<http://www.utsystem.edu/ogc/intellectualproperty/ccmcguid.htm>

Fair Use & Multimedia http://fairuse.stanford.edu/web_resources/multimedia_web_sites.html

Seton Hall University's Copyright and Your Rights

<http://studentaffairs.shu.edu/community/hrp/copyrights.html> is an excellent resource discussing the issue of public performance and fair use, along with a section on Frequently Asked Questions regarding uses of videos

Computer Software

Copyright Clearance Center "Other Campus Copyright Issues," Computer Software

<http://www.copyright.com/Services/copyrightoncampus/other/default.asp>

Fairfield University <http://www.fairfield.edu/x5387.xml> provides a brief description of copyrighted software uses.

Stanford University http://fairuse.stanford.edu/web_resources/web_sites.html

University of Texas Copies of Copyrighted Software

<http://www.utsystem.edu/OGC/intellectualproperty/copypol.htm>

The TEACH Act

The TEACH Act (Technology, Education, and Copyright Harmonization Act, was signed into law by President Bush in 2002 to cover uses of digitized and non-digitized copyright materials in course management systems like Blackboard and in distance education. Requirements for non-

profit academic institutions are found in <http://www.utsystem.edu/OGC/IntellectualProperty/teachact.htm>. See Appendix I

A brief guide to the TEACH Act is provided by The Copyright Clearance Center <http://www.copyright.com/Services/copyrightoncampus/basics/teach.asp>

When to Seek Permission and Examples of Permission Letters

When to Seek Permission

Permission is needed if the work is protected by copyright, the use does not qualify under the Fair Use doctrine in §107 of Title 17 United States Code, or restrictive licensing agreements prevent online usage of the work, to name a few instances in which permission is needed. The University of Texas System provides an excellent list of organizations to contact when permission is required. The list is arranged by specific uses for image archives, freelance writers, music performance, play rights, and other specific uses. Further information on seeking permission may be obtained at <http://www.utsystem.edu/OGC/intellectualProperty/permisn.htm>

University of Texas provides an excellent resource on different agencies to contact for specific permission regarding images, music performance, freelance writers, and other uses of copyrighted materials. <http://www.utsystem.edu/OGC/intellectualProperty/permisn.htm>

The Copyright Management Center Indiana University Purdue University Indianapolis at <http://copyright.iupui.edu/permitintro.htm> provides sample letters on seeking permission for specific uses. The following model sample letter was prepared by the Copyright Management Center Prepared and may be accessed at <http://copyright.iupui.edu/pgeneral.htm> See Appendix III for a General Permission Letter.

Copyright Compliance: Obtaining Permission from the Copyright Clearance Center at <http://www.copyright.com/Services/copyrightoncampus/compliance/default.asp>

National Association of College Stores
<http://www.nacs.org/common/copyright/permissionrequest.pdf>

UC Copyright Copyright Permission Resources
<http://www.universityofcalifornia.edu/copyright/permissionsresources.html>

Penalties and Remedies for Infringement of Copyright Law

Circular 92 of the U. S. Copyright Office provides pertinent sections of the Copyright Act Title 17 United States Code, describing in detail penalties and remedies for excessive uses of materials which are copyrighted, which are not protected by the Fair Use Doctrine, and where permission was not obtained prior to using copyrighted works. Infringement of a copyright owner's rights to

his or her copyrighted material may subject the user to civil penalties, as well as criminal prosecution. <http://www.copyright.gov/title17/circ92.pdf>

Chapter 5, beginning with §501, et seq. of Title 17 United States Code, <http://www.copyright.gov/title17/92chap5.html#501> describes the elements which constitute infringement of copyright, outlines different remedies for copyright infringement, including impounding and disposition of the infringed documents, monetary damages and profits, attorneys' fees and costs. §506 defines the elements constituting criminal copyright infringement of copyrighted works.

According to the Copyright Clearance Center, penalties for infringing the copyright owner's exclusive rights may include damages from \$250 to \$150,000, plus attorney's fees for "each infringing copy." If the court determines that the act of infringing was willful, it may award higher fees.

Consult Penalties and Remedies for Infringement of Copyright Law, Title 17 United States Code, Chapter 5, §501 et seq.
http://www.law.cornell.edu/uscode/html/uscode17/usc_sup_01_17_10_5.html

FREQUENTLY ASKED QUESTIONS

Copying

Question: I don't remember the original source for my material but I've been using it for a long time. Can I continue to use it without permission?

Answer: It depends on the nature of the material. If it is entitled to copyright protection, repetitive copying of the same material without permission may violate "fair use" guidelines. Obtaining permission is recommended.

Question: Do I need permission if there is no copyright notice on the material?

Answer: Yes. The absence of a visible copyright notice does not mean copyright law does not protect the work. All materials created on or after March 1, 1989 are covered by copyright whether or not they have the copyright symbol or statement. Also, the fact that the author is deceased or the book is out of print does not mean that the work is the public domain and may be copied.

Question: How do I find out who owns the copyright for a particular work?

Answer: Most works contain a notice of copyright. You should consult both the page containing the copyright notice as well as any acknowledgement pages in the work. Contacting the publisher is the best method to determine copyright ownership.

Question: Is all copying for educational purposes considered "fair use"?

Answer: No, there is no carte blanche exemption for educational purposes. The other three factors in determining fair use must be taken into consideration: the nature of the copyrighted work, the amount copied in relation to the whole, and the effect of use upon the potential market or value of the copyrighted work.

Question: The item I want copied it no longer in print. Do I still need permission?

Answer: Yes. More than likely there is still a copyright on the material. A through investigation of the used book market should be conducted before proceeding. Contacting the usual trade sources, the current copyright holder, or copying services would constitute a reasonable investigation. If a search determines that another copy cannot be purchased at a fair price, then a copy may be made. House Report 94-1476 stated that a fair price is the prevailing retail price for an unused copy or an average cost charged by an authorized copying service. The fair price of a reproduction is the price as close as possible to manufacturing costs plus royalty payments.

Question: Some materials are marked: “All rights reserved. No part of this book may be reproduced or utilized in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without permission in writing from the publisher.” Can this material still be copied for education purposes?

Answer: Yes, as long as such copying constitutes fair use. The quoted language does not change the fair use analysis.

Question: Can I scan in a photo or graphic I find in a magazine and put it on my web page?

Answer: This would be a clear violation of copyright. If you can find a graphic/photo that is old enough for the copyright to have expired (generally over 75 years old) or is otherwise in the public domain, then this is all right. Otherwise assume the work is copyrighted and seek permission if you want to use it on your web page.

Question: What should I do if I want to use materials that contain photographs or illustrations with a copyright owner different from that of the book itself?

Answer: Many times photographs or illustrations are covered by copyrights owned by a different party from the copyright owner of the material in which they are published. The author or publisher of that material has received permission from the photographer or illustrator to include it in the work but may or may not have the right to grant permission to others to reproduce the photograph or illustration. In some cases, licensing organizations act for the photographer or illustrator. You may need to make a separate request for permission to copy the photograph or illustration. When a professor copies a photograph, he/she is reproducing the entire work of the copyright owner. Fair use seldom allows the reproduction of an entire copyrighted work. The owner may argue that making and providing copies will deprive the owner of a potential sale and create an adverse effect on the market.

Question: I ordered a book that has not arrived in the bookstore. Can I still make copies for the class?

No, not without permission from the publisher.

Question: The publisher did not respond to a permission request. Can I make copies anyway?

Answer: No. Publishers are not required to respond. No response frequently equals a denial.

Videos in the Classroom

It is possible to use videos/DVDs from rental stores in the classroom by what is know as the Face-to-Face Classroom Teaching Exemption. Videocassettes from a rental outlet usually bear a label that specifies “Home Use Only.” Use of such videos is permitted in an educational institution as long as all of the following conditions are met:

The video is shown in a non-profit educational institution, with no admission fee

- charged;
- The video is shown in a classroom or similar place devoted to instruction;
- The showing must be part of a regularly scheduled course and not for entertainment, recreation, or other public performance;
- The showing must be part of the face-to-face classroom teaching activities;
- Attendance must be limited to the instructor and pupils;
- A legitimate copy (not an illegal reproduction), with copyright notice stamp, must be used.

To know more about specific areas of copyright, you are directed to two important resources. The first resource is the Library of Congress United States Copyright Office which contains a section on Frequently Asked Questions at <http://www.copyright.gov/help/faq/>

Next, the Copyright Clearance Center provides another excellent resource in its Frequently Asked Questions to assist you in answering questions in deciding when and whether to use copyrighted materials. <http://www.copyright.com/ccc/do/viewPage?pageCode=cr11-n>

Links to Other Copyright Resources

To become familiar with the legal background of copyright, as well as the copyright statute and the fair use limitation of the copyright statute, please see <http://www.usg.edu/legal/copyright/#part3a1>.

For specific provisions of the Copyright Statute, consult Cornell Law School Legal Information Institute, U. S. Code Collection, Title 17 Copyrights at http://www.law.cornell.edu/uscode/html/uscode17/usc_sup_01_17.html

Georgia Harper, Senior Attorney and Manager of the Intellectual Property System, Office of General Counsel, University of Texas, has written an excellent article Impact of Grokster on Colleges and Universities by providing a fine analysis of the United States Supreme Court decision regarding unlawful file sharing and its impact on college and universities. <http://counselonline.cua.edu/archives/frontpage/fall2005.cfm>

Copyright Materials on the World Wide Web

American Library Association, *Distance Education and the TEACH Act*, <http://www.ala.org/ala/washoff/WOissues/copyrightb/distanced/distanceeducation.htm>

Association of Research Libraries, *Timeline: A History of Copyright in the United States*. <http://www.arl.org/info/frn/copy/timeline.html>

Association of Research Libraries, Copyright and Intellectual Property Policy <http://www.arl.org/info/frn/copy/copytoc.html>, a great resource on court cases and legal decisions and orphan works

Board of Regents Office of Legal Affairs University System of Georgia, *Regents Guide to Understanding Copyright and Educational Fair Use*, presents a very thorough resource on all

aspects of copyright law, including an annotated section on Title 17 United States Code, with citations to leading court cases following the commentary. <http://www.usg.edu/legal/copyright/>

Cardinal Stritch University Library *Copyright Guide for Students*
<http://library.stitch.edu/guides/copyrightforstudents.htm>

Cardinal Stritch University Library *Copyright Guide for Faculty*
<http://library.stitch.edu/guides/fac-copyright.pdf>

City College of San Francisco, *Copyright Information*.
<http://www.ccsf.edu/Info/>

Copyright and Intellectual Property <http://palimpsest.stanford.edu/bytopic/intprop/>, a great resource for links to other copyright Web sites

Copyright in the Library <http://www.utsystem.edu/ogc/intellectualproperty/l-resgen.htm>

Copyright in the Library <http://www.utsystem.edu/ogc/intellectualproperty/l-resgen.htm>

The Educator's Guide to Copyright and Fair Use
A five-part series http://www.education-world.com/a_curr/curr280.shtml

Law and Policy on Campus <http://counselonline.cua.edu/#91635E6F-3B51-4235-B55D014561AA3B6D>

See also University of Texas, Fair Use Guidelines for Educational MultiMedia
<http://www.utsystem.edu/ogc/IntellectualProperty/ccmcguid.htm>

The Use of Student-Created Materials, Copyright Clearance Center
<http://www.copyright.com/Services/copyrightoncampus/other/default.asp>

Videotaping for the Classroom
http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter0/0-e.html