

GUIDELINES FOR USE OF COPYRIGHTED WORKS

The United States Copyright Law (Title 17, United States Code, Sect. 101, et seq.), allows copyrighted works to be used without securing permission from the copyright owner by observing a "fair use" of the material. The following guidelines are offered to describe the boundaries of fair use of copyrighted material used in research, in the classroom, for library reserves, and for interlibrary loan. Those who willfully disregard the copyright policy do so at their own risk and assume all liability.

The Fair Use Doctrine (17 USC § 107)

The fair use of a copyrighted work, including reproduction by photocopies, may be used for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research without infringement of copyright, within specific parameters. When determining whether a particular use of a copyrighted work is a fair use, consider the following factors:

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

I. Single Copying for Teachers or Researchers

For scholarly research, or for use in teaching or preparation to teach a class, a teacher may make or may request to have made a single copy of:

- a chapter from a book; an article from a periodical or newspaper; or,
- a short story, short essay or short poem, whether or not from a collective work; or,
- a chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.

II. Course Packets

Course packets created by instructors may be perceived as substituting for textbooks and therefore may not fall within fair use guidelines. Each article or chapter in a course packet, if derived from copyrighted material, requires permission for use from the copyright owner (usually the publisher). Each item in the packet also must include a notice of copyright.

III. Multiple Copies for Classroom Use

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

- the copying meets the tests of brevity and spontaneity as defined below; and,
- the copying meets the cumulative effect test as defined below; and,
- each copy includes a notice of copyright.

Definitions:

1. Brevity:

Type of work	Amount of work
Poem less than 250 words	Complete, but not more than two printed pages
Poem 250 words or longer	Excerpt of not more than 250 words
Article, story, or essay less than 2,500 words	Complete
Article, story, or essay 2,500 words or longer	Lesser amount of either: Excerpt of not more than 1,000 words OR Up to 10% of work
Illustration (chart, graph, diagram, drawing, cartoon, picture)	One per book or periodical issue Not more than five by one artist, illustrator, or photographer Lesser amount of either: Up to 10% OR not more than 15 images from a published collective work
Special works (poetry, prose, or "poetic prose," which may combine language with illustrations) of less than 2,500 words in entirety	Excerpt of not more than two published pages AND not more than 10% of words found in text
Music and lyrics from an individual musical work	For academic purposes other than performance, less than a performable unit and in no case more than 10% of the work

Motion media work (e.g., animation, video, or film image)	Lesser amount of either: Up to 10% OR not more than three minutes

2. Spontaneity:

The copying is at the instance and inspiration of the instructor. The decision to use the work is so close to the moment of its use for maximum teaching effectiveness that it would be unreasonable to expect a timely reply to a request for permission.

3. Cumulative Effect:

(These limitations do not apply to current news articles in periodicals and newspapers.)

- Not more than one short poem, article, story, essay or two excerpts may be copied from the same author during one class term.
- Not more than three works from the same collective work or periodical volume may be copied during one class term.
- There may not be more than nine instances of such multiple copying for one course during one class term.

Prohibitions with respect to making multiple copies for classroom use:

- Copies may not be used to create, replace, or substitute for anthologies or collective works, regardless of whether they are accumulated or reproduced and used separately.
- Works intended to be “consumable,” such as workbooks and test booklets, may not be copied.
- Copies may not substitute for the purchase of books or periodicals.
- A teacher may not copy the same item from term to term.
- Students may not be charged beyond the actual cost of copying.

IV. Guidelines With Respect to Music

- For *emergency use*, a reasonable number of complete instrumental parts may be copied for use in rehearsal for concert presentation provided purchased replacement copies shall be substituted in due course.
- For academic purposes *other than performance*, single or multiple copies of excerpts may be made, provided that the excerpts are less than a performable unit, but in no case more than 10 percent of the whole work. One copy per pupil only.

- A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the teacher and/or the College.
- A single copy of a sound recording (such as a tape, disc or cassette) of copyrighted music may be made from sound recordings owned by the College or the teacher for the purpose of constructing aural exercises or examinations.

Prohibitions with respect to Music:

- Copying to create or replace or substitute for anthologies, compilations or collective works.
- Copying of or from works intended to be “consumable” in the course of study or of teaching.
- Copying for the purpose of performance, except as noted above.
- Copying for the purpose of substituting for the purchase of music, except as noted above.
- Copying without inclusion of the copyright notice which appears on the printed copy.

V. Audiovisual Media

One copy for personal scholarship or teaching is permitted when unrestricted by contractual agreements.

VI. Interlibrary Loan (17 USC §108)

The Library may make photocopies for interlibrary loans, within certain parameters.

The Library may request, reproduce or distribute a maximum of one copy of a work for a single interlibrary loan request, if:

- the reproduction or distribution is made without commercial advantage; and,
- the library is open to the public; and,
- the reproduction or distribution of the work includes a notice of copyright.

Photocopies of articles either sent or received through interlibrary loan:

- become the property of the requestor; and,
- are limited in use to private study, scholarship, or research; and,
- should number no more than five articles from the most recent five years of a periodical during one calendar year, for a periodical title the library does not subscribe to.

All Interlibrary Loan forms include the following notice:

WARNING CONCERNING COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement. This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

VII. Library Reserves Service

The Library routinely accepts single photocopies of copyright-protected chapters, articles, etc. to be used as course reserves, with these considerations:

- The photocopies are considered to be the instructor's property.
- The library may reproduce a single copy.
- An instructor may provide up to three duplicate photocopies when a course is large enough to require more than one of an assigned photocopy.
- Copyrighted broadcast programs recorded off-air may not be placed on reserve.

Fair use factors should be considered to determine the number and nature of photocopies placed on reserve for any given course.

VIII. Photocopy Machines in the Library

Photocopy machines in the Library shall include signage incorporating the following text:

Notice: The copyright law of the United States (Title 17 U.S. Code) governs the making of photocopies or other reproductions of copyrighted material. The person using this equipment is liable for any infringement.

IX. Use of Film and Video Productions (17 USC §110(1))

Video or film productions may be shown by instructors or pupils when they are used:

- in face-to-face teaching activities of a nonprofit educational institution; and,
- in a classroom or similar place devoted to instruction; and,

- using a legitimate (not illegally reproduced) copy with the copyright notice included; and,
- explicitly to support instruction and the content of the course.

Films or videos, even in a "face-to-face" classroom setting, may not be used for entertainment or recreation, whatever the work's intellectual content.

X. Use of Off-Air Broadcast Programs

A copyrighted broadcast program may be recorded off-air and temporarily retained by a non-profit educational institution and used for educational purposes within the following parameters, unless a recording, duplication and rebroadcast license has been obtained specifically for that program:

- Recordings may be retained for a period not to exceed the first forty-five (45) consecutive calendar days after the date of recording.
- Recordings may be used once by individual teachers in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary.
- Recordings may be used in a classroom or similar places devoted to instruction during the first ten (10) consecutive schools days in the forty-five (45) day calendar day retention period.
- Recordings may be made only at the request of and used by individual teachers, and may not be regularly recorded in anticipation of requests.
- No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.
- Recordings need not be used in their entirety, but they may not be physically or electronically altered, combined, or merged.
- All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.

XI. Transmission of Copyrighted Audio-Visual Material for Distance Learning (17 USC §110(2))

The Technology Education and Copyright Harmonization (TEACH) Act regulates the digital transmission of materials to students during classroom-type instruction delivered over the internet. It does not cover materials students may study, read, listen to or watch on their own time outside of class, including electronic reserves.

Performance, reading, or display of a non-dramatic literary work (e.g., news article, recitation of a poem or speech) or non-dramatic work of music (e.g., performance) may be transmitted in its entirety.

Performance, reading, or display of any other work, such as a dramatic literary work (e.g., film or stage play) or a dramatic musical work (e.g., music video, musical film or theatre, or opera) may be transmitted only in a limited and reasonable amount as determined by fair use guidelines. Commercially produced media must be used in accordance with the terms of the items license agreement.

Copyrighted audiovisual material, including audio and video files, and still images, may be transmitted under specific conditions.

- It is transmitted through a secure, password-protected course management system.
- It is directly relevant to the teaching content of the course.
- It is used as part of a regular, systematic, mediated instructional activity.
- Copyright notice is shown.
- It is a legally acquired, digital copy.
- The amount and degree of material used is similar to what would be used in a face-to-face instructional setting.
- It is not produced or marketed primarily for use in the online distance education market.
- Students' ability to retain or further distribute the material is limited by technology.

Audio, video, and still images existing only in analog format may be converted to a digital format for use in distance learning instruction under these conditions:

- A good faith-effort to locate a digital version of the material has been unsuccessful, or the only digital version available is protected by technological measures.
- Only the amount authorized to transmit has been copied.

XII. Copyright Permission Beyond Fair Use

Individuals wishing to use copyrighted works in ways other than those addressed in the fair use guidelines, including but not limited to copying a large portion of a work, copying an entire work, or producing multiple copies of chapters or periodical articles, must directly obtain written permission from the copyright owner (usually the publisher).

It should be noted that while these guidelines have not been tested in a court of law, they have been accepted by major copyright stake holders and their adoption demonstrates a clear respect for the rights granted under the Constitution of the United States and the relevant laws adopted by Congress.

Final Report of the National Commission on New Technological Uses of Copyrighted Works, July

31, 1978. Washington, DC: GPO, 1979. Print.

Guidelines for Off-Air Taping for Educational Purposes (Kastenmeier Guidelines). Congressional

Record. Oct. 14, 1984. Print.

United States Copyright Office. Copyright Law of the United States. <http://www.copyright.gov/title17/>. Web.

Additional information on the TEACH Act may be found at: <http://www.arl.org/pp/ppcopyright/copystatutes/teach.shtml>