

Copyright protects original works and is inherent upon the works' creation regardless of whether they are registered with the U.S. Copyright Office. Copyright governs uses such as making photocopies, creating course readers, placing materials on reserve in the Library, and uploading items to a web page. Employees and students shall not reproduce copyrighted materials without prior permission of the copyright owner, except for works in the public domain and as allowed by the "fair use" doctrine.

Fair Use

"Fair Use" allows for limited uses of copyrighted works without permission. To determine whether you are within fair use guidelines, the law calls for a balanced application of these four factors:

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 distinction between what is "fair use" and what is infringement in a particular case will not always be clear or easily defined. There is no specific number of words, lines, or notes that may be taken without permission. Acknowledging the source of the copyrighted material does not substitute for obtaining permission. Case law generally considers the most important of the four factors above to be potential economic loss to a copyright holder.

The examples listed below are guidelines for best practices.

A. Single Copying for Instructors

The term "copy" includes photocopying, photographing, scanning, and electronic distribution.

A single copy may be made of any of the following by or for an instructor at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class.

1. A chapter from a book;
2. An article from a periodical or newspaper;

3. A short story, short essay or short poem, whether or not from a collective work;
4. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.

B. Multiple Copies for Classroom Use

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

1. The copying meets the tests of brevity and spontaneity as defined below;
2. The copying meets the cumulative effect test as defined below; and
3. Each copy includes a notice of copyright.

Definitions:

1. Brevity
 - a) Poetry – a complete poem if less than 250 words and if printed on not more than two pages or from a longer poem, an excerpt of not more than 250 words.
 - b) Prose – Either a complete article, story or essay of less than 2500 words, or an excerpt from any prose work of not more than 1000 words or 10% of the work, whichever is less.
 - c) Illustration – One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.
2. Spontaneity
 - a) The copying is at the instance and inspiration of the individual instructor.
 - b) The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.
3. Cumulative Effect
 - a) The copying of the material is for only one course in the school in which the copies are made.
 - b) Not more than one short poem, article, story, essay, or two excerpts may be copied from the same author, not more than three from the same collective work or periodical volume during one class term.
 - c) There shall not be more than nine instances of such multiple copying for one course during one class term (does not apply to current news periodicals, newspapers and current news sections of other periodicals).

4. Prohibitions – Notwithstanding any of the above, the following shall be 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 commercial material.
 - c) Copying shall not substitute for the purchase of books, publisher's reprints or periodicals; be directed by a higher authority; or be repeated with respect to the same item by the same instructor from term to term.
 - d) No charge shall be made to the student beyond the actual cost of the photocopying.

Compilations

Permission from the copyright owner should be obtained when using excerpts of copyrighted work to create anthologies or "coursepacks," even if the excerpts fall under the definitions in the "fair use" doctrine.

C. Online/Hybrid Courses (Distance Education)

The TEACH Act provides instructors' greater flexibility to use third party copyrighted works in online or hybrid courses. An individual assessment will be required to determine whether a given use is protected under the Act. The following criteria are generally required:

1. The online instruction is mediated by an instructor;
2. The transmission of the material is limited to receipt by students enrolled in the course;
3. Technical safeguards are used to prevent retention of the transmission for longer than the class session;
4. The performance is either of a non-dramatic work or a "reasonable and limited portion" of any other work that is comparable to that displayed in a live classroom session;
5. The work is not a textbook, course pack, or other material typically purchased or acquired by students for their independent use and retention, including commercial works that are sold or licensed for the purposes of digital distance education;

6. The District does not know, or have reason to know, that the copy of the work was not lawfully made or acquired;
7. The District notifies students that the works may be subject to copyright protection and that they may not violate the legal rights of the copyright holder.

D. Library Reserves

All materials placed on print and electronic reserve within the Library will be at the initiative of the faculty for the non-commercial, educational use of students. All Reserves will be provided in a manner that respects current copyright law, the rights of copyright holders and Fair Use rights.

E. Obtaining Permission to Use Copyrighted Material

Responsibility for obtaining permission to print, duplicate or display copyrighted works shall rest with the individual using the copyrighted material. This could involve obtaining written permission to use the work from the copyright owner or through services, e.g. Copyright Clearance Center. All necessary records pertaining to copyright authorization shall be kept in the respective Division/Department office.

All requests for printing, duplication or display services of copyrighted materials, whether print or non-print shall be accompanied by an Approval Form and the Fair Use Checklist (see appendix), properly completed and signed by the individual requesting services indicating that the request is in full compliance with the copyright law and that written permission (if applicable) is on file with the appropriate Division/Department. Where exceptions are necessary, authorization to proceed with printing, duplication or display activities will require the signature of the requestor's Dean or Director.

District personnel will follow the guidelines provided by the United States Copyright Office in Circular 21: "Reproduction of Copyrighted Works by Educators and Librarians", which can be found online at:
<http://www.copyright.gov/circs>.

Employees with questions regarding copyright law should view the ECC Copyright page for resources and operating procedures related to copyright.

F. Use of Copying Machines and Services

To eliminate District liability, all unsupervised copying machines shall be labeled with the following notice:

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

The copying services provided at ECC shall state the following on its documents:

“This institution reserves the right to refuse a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.”

G. Guidelines for Using Computer Programs

1. A District employee shall observe copyright protection when using computer software whether or not it bears a copyright mark, unless it is marked as public domain;
2. A District employee using computer software under a license agreement, shall read and follow conditions and restrictions as stipulated. Modifications to purchased computer software are not allowed;
3. A District employee shall not make a copy of computer software for use other than as specifically permitted under the license agreement or a copyright protection;
4. Lack of copyright protection does not constitute permission to copy without the permission of the copyright owner. An exception is software available in the public domain.

H. Using materials from the Internet

Copyright law governs the use of materials, including images, you might find on the Internet, just as it governs the use of books, video or music in the analog world.

1. Neither publication nor a notice of any kind is required to protect works. Copyright protection is automatic;
2. Permissions should be obtained for items copied from internet sources unless you have verified that it is not required. For example, it is possible to search for works under a Creative Commons license that typically allows for the works' non-commercial use as long as attribution to the creator is provided;
3. Individuals will be liable for own actions when they copy and distribute others' copyrighted works without permission.

I. Appendix: Fair Use Checklist and Other Resources

1. Fair Use Checklist: <http://copyright.Columbia.edu>
2. National Association of College Stores: These booklets “Questions & Answers on Copyright for the Campus Community” and “Guidelines for Campus Copying” are recommended.
<http://www.nacs.org/toolsresources/cmip/copyright/questions.aspx>
3. Software and Information Industry Association: <http://www.siiia.net>
4. Copyright Clearance Center: <http://www.copyright.com>
5. American Library Association: <http://www.ala.org/advocacy/copyright>

References:

U. S. Code Title 17, Copyright Act of 1976; Education Code Sections 32360, 67302
Fair Use: Copyright Act, Section 107
Compilations: Basic Books, Inc. vs. Kinko's Graphics Corp. (S.D.N.Y. 1991) 758
F.Supp. 1522; and Princeton University Press v. Michigan Document Services, Inc.
(6th Cir. 1996) F.3d 1381.
Online Courses: The TEACH (Technology, Education and Copyright Harmonization)
Act, USC 17, Copyright Act, Sections 110(2) and 112

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