

## Copyright Basics

### Introduction

It is the policy of the University of San Diego to comply with copyright laws. This website provides an introduction to and general overview of copyright law, particularly as it applies to scholarly and educational activities.

In reading the information on this website, please keep in mind that this website is for general information and education only and does not constitute and should not be considered a substitute for legal advice.

### What Is a Copyright and What Does a Copyright Protect?

A copyright is the set of exclusive legal rights that authors have over their works for a limited period of time. Copyright protection is based upon Article I, Section 8 of the United States Constitution which provides in pertinent part: “The Congress shall have the Power To ... promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries ...” The Copyright Act of 1976 and its amendments implement this provision of the Constitution and extend protection to eight categories of “works of authorship”:

- (1) literary works (including not only books, articles and similar works, but also software programs and their accompanying documentation)
- (2) musical works, including any accompanying words
- (3) dramatic works, including any accompanying music
- (4) pantomimes and choreographic works
- (5) pictorial, graphic and sculptural works
- (6) motion pictures and other audiovisual works
- (7) sound recordings
- (8) architectural works

To be eligible for copyright protection, the work of authorship must be both “original” and “fixed in a tangible medium of expression.”

To be “original,” the work need only reflect a minimal degree of creativity and must not have been copied.

A work is “fixed in a tangible medium of expression” when it actually is reduced to paper, the computer screen, a piece of canvas, etc. – and becomes something more than just an idea in the author’s head. Copyright law does not protect the underlying facts or ideas in a copyrighted work, but rather only protects the *expression* of those facts or ideas. For example, copyright law does not protect factual data in a research article, even if the information or data was previously unknown and required a great deal of effort to collect. By way of another example, copyright law does protect the *Harry Potter* book series, but would not prohibit others from writing books about child witches and wizards.

### **What Rights Does Copyright Protection Provide?**

Copyright law gives the owner of a copyright the exclusive right to make copies of the copyrighted work, distribute the work, display or perform the work, and create derivative works. Copyright law also gives the owner the exclusive right to authorize others to do the same. These exclusive rights are subject to limited exceptions.

### **Is A Mark or Registration Necessary for Copyright Protection?**

No. Works published after 1989 do not need to have a copyright notice to enjoy protection. Similarly, registration of the copyright is not required to obtain a copyright, although it may be required to enforce a copyright in federal court.

### **How Long Does Copyright Protection Last?**

Works published in the United States between 1923 and 1978 are protected for 95 years from the publication date, if proper copyright formalities were followed. Since 1978, works generally have copyright protection for the life of the author plus 70 years. Any work published in the United States before 1923 is in the public domain and may be freely used.

### **When Is Permission Required?**

Unless an exception to the copyright owner’s exclusive rights applies, you must obtain permission from the copyright owner to copy, distribute, display, or perform a copyrighted work in any medium for any purpose.

### **How Do I Obtain Permission?**

Each faculty member is responsible for obtaining or arranging to obtain copyright permissions for classroom handouts, online posting of materials, materials placed on library reserves, or other academic-related use. Please submit requests for permission at least six weeks before the material is needed as the process can be slow, especially when dealing directly with a publisher. If permission is denied, or cannot be obtained in time, alternate material must be found. Where the cost of securing copyright permissions cannot be included in the cost of class coursepacks, the costs generally will be the responsibility of the department.

A request to use copyrighted materials usually can be sent to the permission department of the publisher of a work. Permission requests should contain the title, author and/or editor; the exact material to be used; the number of copies to be made; the intended use of the material (e.g. educational); the form of distribution (e.g. hard copies to classroom, posted on the Internet with password protection, etc.); and whether the material is to be sold (e.g. as part of a coursepack).

The Copyright Clearance Center (CCC) is able to give permission to use a wide number of materials for a fee. The CCC is a centralized service for requesting copyright permissions and paying applicable royalties. For information, please contact [www.copyright.com](http://www.copyright.com) or (978)750-8400.

For items not listed with the CCC, contact the publisher or copyright holder directly. Many publishers now grant permissions via phone, fax, e-mail, or through their websites.

You are encouraged to obtain written permission when permission is necessary. If oral permission only is obtained, a written record should be kept of the oral permission.

## **Exceptions**

### **Works in the Public Domain**

Works that have passed into the “public domain” are no longer subject to copyright protection and may be used freely by anyone, in any way, and for any purpose, educational or otherwise (at least insofar as copyright is concerned). Unfortunately, there is no central, comprehensive, and authoritative registry of public domain works; the rules governing public domain status are complicated; and there are many misunderstandings. For example, it is not the case that a work is automatically in the public domain simply because it is available on the Internet or does not contain a copyright notice. While many such works are in the public domain, those facts alone do not determine their status.

Two categories of works that clearly are in the public domain are: (1) works that were first published in the United States before 1923; and (2) “works of the United States Government” (defined as works “prepared by an officer or employee of the United States Government as part of that person’s official duties,” such as federal judicial opinions, presidential speeches, and congressional and federal agency reports), regardless of when they were first published.

### **Fair Use**

The fair use doctrine provides for limited use of copyrighted materials for educational and research purposes without permission from the copyright owner.

Whether a particular use is a “fair” use requires a case-by-case balancing of four subjective factors. Those factors include:

- (1) The purpose and character of the use. Use for educational, non-profit and personal use is favored over commercial use. However, not all educational uses are fair use.
- (2) The nature of the copyrighted work to be used. Use of a work that is factual in nature weighs toward a finding of fair use. Use of imaginative works is more likely to require permission.
- (3) The amount and significance of the portion used in relation to the entire work. When only smaller portions of a work are reproduced, the balance tips in favor of fair use. When large portions are reproduced, the balance tips against fair use. Be careful, though. At least one court held that copying only 5% of a book was not fair use.
- (4) The impact of the use upon the potential market for or value of the copyrighted work. Uses that have little or no impact on the marketability of the work are more likely to be considered fair use. Where a work is available for purchase or license at a reasonable cost, copying all or a significant portion of the work (in lieu of purchasing or licensing a sufficient number of authorized copies) would likely weigh against fair use.

The fair use law is purposefully broad and flexible. It requires thoughtful analysis of each of the four factors based on the particular facts of the situation. A final determination of fair use depends on weighing and balancing all four factors against the facts of an individual situation. Faculty, administrators, staff, and students are encouraged to make decisions about a contemplated fair use of copyrighted works in an informed and reasonable manner in order to meet educational and research objectives. If it is unclear whether a particular use is permitted under the fair use doctrine, you should consider obtaining permission from the copyright owner to use the work.

### **Performance and Display of Copyrighted Works in the Classroom**

Under a specific statutory exception to copyright, faculty and students may perform or display any copyrighted work in the course of face-to-face teaching activities without obtaining the permission of the author. Note that this exception does not permit copying or distributing a work. It only permits “displaying” the work (i.e. showing a copy of it either directly or by means of a projection or similar system) or performing it during class time (i.e. showing a film or video, playing music, reciting a poem, acting out a play, etc.) To qualify for this exception, the audiovisual work must have been lawfully made.

## **Performance and Display of Copyrighted Works in Distance Education**

The Technology, Education and Copyright Harmonization Act of 2002 (the “TEACH Act”) establishes standards for copyright and distance education. The TEACH Act redefines the terms and conditions on which accredited, nonprofit educational institutions in the United States may use copyrighted materials in distance education without permission from the copyright owner. The law expanded the categories of works that can be performed in distance education to include “reasonable and limited portions” of most works, with the exception of works produced primarily for the education market.

While the TEACH Act expands the scope of educators’ rights to perform and display works for distance education, the law is much more narrow than the exception that permits the performance and display of copyrighted works in face-to-face classroom activities. In a classroom environment an educator may show or perform any work regardless of format with no permission from the copyright owner. Under the TEACH Act, the same educator would have to scale back some of those materials to show them to distant students.

Provided the requirements of the TEACH Act are followed, transmissions of performances of entire non-dramatic works and reasonable and limited portions of any other performance or audiovisual work may be made without obtaining permission from the copyright owner. The TEACH Act imposes a number of restrictions and requirements, including, among others:

- (1) A work may be displayed only in “an amount comparable to that which is typically displayed in the course of a live classroom session,” which, depending on the nature of the work, may not include the entire work. As a result, the TEACH Act would not permit the posting of lengthy readings that typically would be studied outside of class and is not a justification for the creation of electronic coursepacks.
- (2) Nondramatic literary and musical works may be performed in their entirety, but other works may be performed only in “reasonable and limited portions.”
- (3) To the extent technologically feasible, the institution must limit access to the works used to students officially enrolled in the relevant course.
- (4) To the extent technologically feasible, the content must not be subject to retention by students.

Please see the links below for more detailed information about the TEACH Act and its many restrictions and requirements.

### **Single Copies for Use in Teaching and Research**

Because of the uncertainties inherent in the general fair use analysis, there have been a number of efforts over the years to develop more concrete guidelines for specific common situations. Under one such set of guidelines negotiated by representatives from higher education and the publishing industry, it is generally accepted that faculty may make single copies of the following for use in their scholarly research, teaching, or preparation for teaching:

- (1) A chapter from a book
- (2) An article from a periodical or newspaper
- (3) A short story, short essay, or short poem
- (4) A chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper

These guidelines represent the minimum of what is permissible, not the outer limits of fair use. Copying in excess of these guidelines may be a fair use if it meets the fair use test described above. Also keep in mind that while these guidelines do not specifically discuss copying by students, it generally has been assumed that they have comparable rights under fair use.

### **Multiple Copies for Classroom Distribution and Use**

Under a similar set of negotiated guidelines, it also is generally considered to be fair use for faculty to make copies of copyrighted material and distribute them to their students for classroom use and discussion under the following conditions:

- (1) The number of copies made of any given work may not exceed the number of students in the course.
- (2) The copies must be made “at the instance and inspiration of the individual teacher.”
- (3) The inspiration to use the work and “the moment of maximum teaching effectiveness” with respect to that work must be “so close in time that it would be unreasonable to expect a timely reply to a request for permission.”
- (4) Each copy must include a notice of copyright.
- (5) Any charge to the students may not exceed the actual cost of copying.

(6) The amount copied from any given work may not exceed the following:

Poetry: (a) a complete poem if less than 250 words and if printed on not more than two pages or (b) an excerpt of not more than 250 words from a longer poem (though either limit may be expanded to permit the completion of an unfinished line).

Prose: (a) a complete article, story, or essay consisting of less than 2,500 words or (b) an excerpt of not more than 1,000 words or 10% of any other prose work, whichever is less, but in any event a minimum of 500 words (though either limit may be expanded to permit the completion of an unfinished paragraph).

Illustration: a single chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue.

Special works combining words and illustration, and consisting of fewer than 2,500 words in their entirety: an excerpt of up to two pages, but no more than 10% of the words.

- (7) The copying of any given item must be for only a single course and may not be repeated by the teacher from term to term.
- (8) The copying must be limited to one short poem, article, story, or essay, or two excerpts from the same author and three from the same collective work or periodical volume (other than current news periodicals and newspapers) during one class term.
- (9) No more than nine items in total may be copied for one course during one class term.
- (10) “Consumables” such as workbooks, exercises, and tests may not be copied.
- (11) Copying may not be used to create or substitute for anthologies, compilations, or other such collective works.

As with the single copy guidelines, these guidelines represent the minimum of what is permissible, not the outer limits of fair use. Copying in excess of these guidelines may be a fair use if it meets the fair use test described above.

### **First Sale Doctrine**

The owner of lawfully obtained copyrighted content may dispose (lend, rent, sell, give-away, or throw away) that copy without permission of the copyright owner.

This exception does not apply to recorded music, and software licenses typically prohibit the use of the first-sale doctrine.

### **Libraries and Archives**

Under copyright law, libraries and archives have certain exemptions to reproduce copyrighted works.

### **Electronic Reserves**

If the library owns a copy of or has secured a license for a publication, the library may place that copy on reserve without obtaining copyright permission. If you wish to have material reproduced and placed on reserve for students or others to review, the library typically must obtain copyright permission to do so, unless use of the material is a fair use under the law; the material is in the public domain; or the material falls within another statutory exception.

### **Hard Copy or Electronic Coursepacks**

If you wish to use a hard copy coursepack, you may make arrangements through the Bookstore. The Bookstore staff will request permissions for materials to be used, copied, and bound in the coursepack. Copyright permissions are granted on a one-time-use basis, and permission must be obtained during each academic session in which the materials are used. Materials to be reproduced in the Bookstore must be submitted no less than four weeks before the beginning of the term to allow time needed to obtain permissions.

Faculty or students may post or link to copyrighted materials on password protected course sites only in compliance with copyright law. A sound guideline is if copyright permission were necessary to place the material into a hard copy coursepack, then copyright permission is necessary to place the material into an electronic class reserve. Copyright permission is required unless use of the material is a fair use under the law; the material is in the public domain; or the material falls within another statutory exception.

### **Penalties**

The penalties for copyright infringement can be severe. Under copyright law, a court may award up to \$150,000 in civil statutory damages for each separate willful infringement. Copyright infringement also can be a crime under federal law. Under University of San Diego policies, violation of copyright laws can result in disciplinary action up to and including dismissal from the university.

### **Links to Copyright Resources**

A Crash Course in Copyright:

<http://www.utsystem.edu/OGC/IntellectualProperty/cprtindx.htm>

Stanford University Libraries' Fair Use Site:

<http://fairuse.stanford.edu>

Copyright Management Center:

<http://www.copyright.iupui.edu>

Copyright Information and Education (University of Minnesota):

<http://www.lib.umn.edu/copyright/>

The United States Copyright Office:

<http://lcweb.loc.gov:80/copyright/>

Copyright Clearance Center:

<http://www.copyright.com>

### **Key University Contacts**

Bookstore

Melanie Pinnell, Custom Publishing Coordinator  
(619) 260-4551

Copley Library

Steven Staninger, Associate University Librarian  
(619) 260-5973

Information Technology Services

Shahra Meshkaty, Senior Director, Academic Technology Services  
(619) 260-2298

Instructional Media Services

James Straub, Director  
(619) 260-5954

Legal Research Center, School of Law

Ruth Levor, Associate Director  
(619) 260-4604

Office of the General Counsel

Kelly Capen Douglas, General Counsel  
(619) 260-7974

### **Frequently Asked Questions**

**Q. Isn't any use in an educational setting considered fair use?**

A. No. The purpose and character of the use (for example, educational use) is only one of four factors considered in determining fair use. While use for educational purposes favors fair use, the other factors (e.g. nature of the work, the amount copied, and the effect on the market) may weigh against fair use in a given situation.

**Q. Is it okay to photocopy a book that is out of print?**

A. No. Many out of print books are still protected by copyright. Check with the Copley Library about the possibility of buying a copy through the out of print market or borrowing a copy through the interlibrary loan system.

**Q. May I put electronic copies of course readings on my home page or on WebCT or Blackboard without copyright permission?**

- A. Yes, as long as the following principles are followed:
- Materials that are in the public domain may be used freely.
  - If you own the copyright to the materials, you may use the materials freely.
  - Follow the guidelines above for multiple copies of copyrighted materials that are used and distributed as part of a course.
  - Whenever possible, point to documents that are available and lawfully posted on other websites, rather than downloading them onto your own site.
  - If you post copyrighted materials under fair use (without securing copyright permission), keep them up for only one semester and restrict your website to class members only.
  - When in doubt, seek permission!

**Q. Do the copyright laws apply to the world wide web?**

A. Yes! Copyright laws apply equally to electronic materials, even if the author does not post a copyright notice.

**Q. I found a great article on the internet on a topic that relates to a course I currently am teaching. May I download it onto my course web page?**

A. If you do not have time to seek permission and you do not intend to keep it up or use it again, this use should be considered spontaneous fair use, but for one time only.

**Q. But I want to use the article every time I teach the class. May I at least provide a link?**

A. Yes. Linking to other websites generally is permitted. Include an acknowledgment to the author if possible.

**Q. May I copy a rental video to use later?**

A. No!

**Q. Is the work prepared under a federal grant protected by copyright?**

A. Yes. Unlike works of the United States government, works produced by contractors under government contracts are protected the U.S. copyright laws. The terms of the contract will determine ownership.