

Copyright Quickguide

For Students & Faculty

Siena Heights University

Introduction

This document provides guidelines for students and faculty on using materials in an educational setting that may be copyright protected. The intent is to ensure that the uses of any course materials or library resources do not infringe on a creator's copyright and that copyrights owned by instructors or students are clearly understood and observed.

The University follows federal laws, including guidelines for a fair use of copyrighted materials without permission and allowances for digital transmissions of performances and displays.

Overview

What Does Copyright Do?

A copyright grants the creator the exclusive right to reproduce and to grant permission to others to reproduce the created works. The protection is limited by law to original, creative works in media subject to copying, whether or not they have been published.

A copyright may be held on a variety of creations, including literary works, computer programs, musical pieces, dramas, graphical illustrations, motion pictures, and sound recordings.

Copyright protection does not extend to any idea, procedure, process, system, method of operation, concept, principle or discovery regardless of its medium of expression. Nor does it extend to works produced without originality or creativity regardless of the amount of work involved.

How Are Works Protected?

Most likely, you already hold many copyrights. This is because copyright protection is automatic as soon as an original, creative work is expressed in a fixed form. Although the symbol © is no longer required, it is recommended so that users might not assume that its absence justifies copying without permission.

How Long Does a Copyright Last?

All works published in the United States before January 1, 1923 and without subsequent claims of copyright are in the *public domain*, and therefore not copyright-protected. Protection of other works largely depends on the country

where the copyright was secured, when the copyright was first secured and whether and when a copyright was renewed. A summary of variations the duration of copyrights can be found in "Circular 15A," published by the United States Copyright Office.¹

The Law

The *Copyright Law of the United States of America* defines the legally protected rights of the copyright holder and fair use guidelines for users of copyrighted materials. (Hereafter *Copyright Law*)²

The Copyright Law defines exclusive rights, including:³

- Reproduction of the copyrighted work in any format, digital included
- Preparation of derivative works (e.g., writing music to a copyrighted poem)
- Distribution of copies of the copyrighted work to the public by sale, rent, lease, or gift
- Performance of the copyrighted work publicly (re plays, musical recordings, movies, etc.)
- Audio/visual/digital transmissions of copyrighted works publicly (re literary, musical, pictorial, graphic works, etc.)

Infringements of the law are liable to both civil and criminal penalties. Civil awards may include a monetary award of up to \$1 million, attorney fees, an injunction against the violator, and confiscation/destruction of the materials that incorporate the copyrighted works.

Fair Use

Guidelines for fair use specify (a) situations in which copyrighted materials may be used *without* express permission of the copyright holder and (b) situations where obtaining permission is advised.⁴

The following table⁵ gives factors to consider whether or not to seek permission from the copyright holder.

FAVORS FAIR USE

OPPOSES FAIR USE

Purpose. *How will the copied materials be used?*

Nonprofit	Profit from use
Educational	Entertainment
Transformative uses beyond the scope or purpose of the original, such as criticism, parody, or commentary	Loose restrictions on use Credit not given to creator
Personal research	
Firm restrictions on use	
Credit given to creator	

Type. *What is the nature of the copied material?*

Factual or nonfiction	Fiction
Important for educational objectives	Highly creative
Published	Unpublished
Restricted to a specific educational issue	

Marketability. *What market effect might the copyright holder experience?*

No significant market effect	Impairs the market potential of the work or of derivatives
Not the critical portion of the work	A critical portion of the work
Market effect is undetermined because no available licensing mechanism exists or the original is unavailable	Reasonable licensing mechanism for the original is available Affordable permission available

Amount. *How much of the work will be copied?*

Small amount	Large amount
Single use	Repeated or long term use
Excerpts from an article	No restrictions on further distribution

For examples of allowable amounts, see [Appendix I](#)

Permission to exhibit works created by others should be requested of the creator. The request should stipulate any limits on distribution. This includes any works by students. The permission should be written, and a clear acknowledgement of the permission and the creator's name should appear in the version exhibited to others.

Digital Transmissions of Performances & Displays

Definitions: In a *performance*, images are shown in a continuous fashion: e.g., a play, recital, dance, or short video. In a *display*, images are shown singly, in a non-continuous fashion: e.g., any single image and slide presentations of multiple images.

Distance education technologies allow students more flexibility regarding both when and where they receive instruction. At the same time, it is much easier to copy digitalized performances and displays without permission or regard for fair use guidelines. The Copyright Law includes provisions for distance education that allow more flexibility on amounts and time frames than what is required for classroom settings.⁶ However, these allowances apply only for educational institutions approved by a recognized accrediting agency.

Performance/display criteria widen the allowances on the amounts of copied material:

- Digital transmissions of entire performances of non-dramatic literary and musical works, such as poetry readings and non-dramatic musical works
- Limited parts of dramatic literary, musical, or audiovisual works such as opera, music videos, and musicals
- Images of other creative expressions such as paintings, sculptures, and photos

Performance/display criteria also expand the time frames, in some cases up to the duration of the course, during which students can access the materials. The criteria also specify that transmission of this material must be the type that is commonly used in classroom teaching, such as:

- Shown within the course delivery under the instructor's direct supervision
- Directly related to course content
- Limited to enrolled students
- A copy legally made (vs. ripped or rented)

Where fair use guidelines prohibit making copies of other types of materials for more than one term, the same digital copy of a performance/display may be retained term to term. Copies must be stored on a secured server and may not be opened for students unless allowed by law. The institution itself must apply technological measures that reasonably prevent students from distributing them beyond the course setting.

Copying an entire digital work is allowable if the amount to be used is authorized by statute but technological protections prevent copying an allowable segment.

Creating digital copies of analog originals (as in vinyl records, tape recordings and scanned images) is allowed provided that the amount copied does not exceed what is allowed.

Digital copying of performances or displays designed for the educational market is not allowed.

For a checklist to ensure compliance, see [Appendix II](#)

For specifics on these factors, examples of fair-use court cases, and illustrative scenarios, see "Fair Use - CSU" and "Fair Use - House Report No. 94-1467," under *Copyright Guidelines* in MySiena.

Appendices

I. Fair Use Amounts Allowances

Prior to the enactment of the 1976 Copyright Act, the House of Representatives stipulated the following amounts of material that may be copied.⁷ These allowances apply provided that the instructor spontaneously decides to use a work for immediate educational purposes and cannot reasonably delay its use by pursuing permission.

- A complete article or story less than 2,500 words
- 1,000 words or 10% (whichever is shorter) taken from a prose work
- One illustration, chart, diagram, or picture per book or periodical issue
- No more than 250 words of a poem (whether entire or extract).

Copying must be for only one course, and no more than one short poem, article, or story. At most two excerpts may be copied from the works of any one author. All copied materials must indicate that the original is copyrighted.

The same guidelines include several prohibitions:

- Without permission, the same instructor may not copy the same item from term to term.
- Unauthorized copying may not be used to replace an available anthology or compilation.
- Unauthorized copies may not be made of consumable works such as workbooks or standardized tests.
- Unauthorized copying may not substitute for the purchase of books, authorized reprints, or periodicals.
- Unauthorized copying may not be directed by a higher authority, such as a department head or dean.
- Students cannot be charged beyond the actual cost of photocopying.

These guidelines do not automatically protect users from allegations of copyright infringement. Recent lawsuit judgments suggest that a judge is more likely to base final judgments on a personal sense of fairness, particularly regarding marketability, than on any strict interpretation a fair-use checklist. In most cases where factors against fair use are present, getting permission is strongly advised. For instructions on getting permission, see Appendix A of "Copyright: Policy & Guidelines" (under "Copyright Guidelines" in MySiena).

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II. Digital Performances & Displays Checklist

This list is an aid to determine fair use of copyrighted displays and performance material without permission.⁸

- The materials I want to use are specifically for students in my SHU class. Only those students will have access to the materials.
- The materials will be provided at my direction during the relevant lesson.
- The materials are directly related to my teaching content.
- My class is part of the regular offerings of SHU.
- I will include a notice that the materials are protected by copyright even in the absence of the © indicator.
- I will use technology that reasonably limits the students' ability to retain or further distribute the materials.
- I will make the materials available to the students only for a period of time that is relevant to the context of a class session.
- I will remind students that further distribution is prohibited.
- I will store the materials on a secure server and transmit them only as permitted by this law.
- I will not make any copies other than the one I need to make the transmission.
- The materials are of the proper type and amount the law authorizes:
 - Entire performances of non-dramatic literary and musical works
 - Reasonable and limited parts of a dramatic literary, musical, or audiovisual works
 - Displays of other works, such as images, in amounts similar to typical displays in face-to-face teaching
- The materials are not among those the law specifically excludes from its coverage:
 - Materials specifically marketed for classroom use for digital distance education
 - Copies I know or should know are illegal
 - Course packs, textbooks, electronic reserves and similar materials typically purchased by students for independent study outside the classroom or class session
- If I am using an analog original, I checked before digitizing it to be sure:
 - I copied only the amount that I am authorized to transmit.
 - There is no digital copy of the work available except with technological protections that prevent my extracting a portion for the class in the way the statute authorizes.

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Additional Resources

Stanford University: Copyright Charts and Tools:
http://fairuse.stanford.edu/charts_tools/

Columbia University: Copyright Advisory Office:
[http://copyright.columbia.edu/copyright/.](http://copyright.columbia.edu/copyright/)

University of North Carolina-Charlotte. A complete review of the TEACH Act (now incorporated into the Copyright Law): <http://copyright.uncc.edu/copyright/TEACH>

Notes

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- ¹ Circular 15A, "Duration of Copyright": <http://www.copyright.gov/circs/circ15a.pdf>
 - ² For the "Copyright Law of the United States of America," (hereafter, *Copyright Law*) see <http://www.copyright.gov/title17/index.html>. This document, aka "Circular 92," is a 2011 update of the 1976 Copyright Act (Title 17 of the U.S. Code, which appears as Appendix A in the Copyright Law) and includes all amendments up to December 2010.
 - ³ Copyright Law, § 106
 - ⁴ Copyright Law, § 107. Similar terms used by other resources are: (1) purpose or character; (2) nature or type; (3) effect and marketability; (4) amount and substantiality.
 - ⁵ This fair use table is based on the Copyright Law (2011) and on samples from the University of Indiana, Purdue University, and University of Texas.
 - ⁶ The performance/display criteria were made law in 2002 by the Technology, Education, and Copyright Harmonization Act (TEACH Act, S.487).
 - ⁷ House Report No. 94-1476, "Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions." See the section by this title in Circular 21 ("Reproduction of Copyrighted Works by Educators and Librarians"), www.copyright.gov/circs/circ21.pdf .
 - ⁸ This TEACH checklist was adapted to the SHU context from material at the University of Texas website (<http://copyright.lib.utexas.edu/teachact.html>). It omits stipulations that SHU faculty may assume: that SHU is a nonprofit accredited educational institution, has a policy on the use of copyrighted materials, and provides accurate information to faculty, students, and staff about copyright.