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## **USE OF COPYRIGHTED MATERIALS AT USCB**

Because institutions are required to have policies on the appropriate use of copyright in addition to copyright policies in general, the following information is presented as it applies to copyright usage at USCB. This policy should not be construed in any way as legal opinion, which can only be provided by the Legal Office of the University of South Carolina.

### **INTRODUCTION**

The Copyright Act (1976) protects intellectual property, giving its creator the exclusive right to reproduce, prepare derivative works, distribute, perform, display, sell, lend or rent his/her creation(s). The Act protects "forms of expression," e.g., most writings of prose, poetry, drama, etc., images, artworks, written or recorded music, animations, sound recordings, motion pictures, videotapes, DVDs, Web pages, computer programs, architectural drawings, photographs, and other creative works. Copyright covers works created January 1, 1978, and after, extending for the life of the creator plus at least 70 years. It does not cover creations determined to be in the "public domain," such as publications of the U.S. government and works that were never copyrighted or whose copyrights have expired or were terminated. (See the University of North Carolina's "When Works Pass into the Public Domain," by Lolly Gasaway, at <http://www.unc.edu/%7Eunclng/public-d.htm>). Copyright protects both published and unpublished works, whether or not they carry the copyright notice or are registered with the U.S. Copyright Office. In fact, the moment a work is "fixed" in a tangible medium of expression; it is automatically covered by copyright. It is always wise to assume copyright protection for whatever piece of intellectual property you are considering using.

Because we work at a non-profit educational institution, we are allowed, in certain limited circumstances, to use copyrighted work without making payment or seeking permission from the copyright holder. The Copyright Act (1976) sets forth four "provisions" by which copyrighted materials may be used in non-profit educational settings:

1. Section 107, Fair Use Doctrine
2. Section 110, Classroom Exemptions for Performance & Display
3. Section 108, Library Exemptions
4. Section 504, Good-Faith Fair Use Defense

## **1. SECTION 107: FAIR USE DOCTRINE**

Exemptions, under the Fair Use Doctrine, are routinely made for purposes such as criticism, comment, news reporting, teaching, and scholarly research. These are guidelines only; the Copyright Act doesn't set quantitative limits on what can be copied. In determining if "fair use" has been violated, courts try to answer the following four questions, based on the four provisions of the law:

1. Is the purpose or character of the use commercial (for sale) or non-profit (educational)?
2. Is the nature of the copyrighted work creative or factual/informational? (The former is protected by copyright; the latter is not.)
3. What is the amount and substantiality of the portion used in relation to the copyrighted work as a whole? (Rule of thumb: use no more than is necessary. For small poems, perhaps the entire work; for larger works, only a small amount; but NEVER copy the "heart" or "creative essence" of a work -- that's infringement!)
4. What is the effect of this use on the potential market for, or value of, the copyrighted work? (This is the most important question of the four; did the copying or use deprive the copyright holder of a sale? Copying should not harm the commercial value of the work.)

**Fair use guidelines allow faculty members to make single copies of the following:**

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

**Fair use guidelines allow faculty members to make multiple copies with the following limitations:**

- The copying MUST be done at the initiative of the professor (at a moment of inspiration, when it is unreasonable to get permission from the copyright owner). NOTE: If you have time to seek a publisher's reprint, or get permission, you are obligated to do so. It is only if you do NOT have time that "fair use" allows you to make copies for students.

- Copies must be made from a legally obtained original.
- Copies must contain a full citation; each print handout should carry a copyright statement.
- Only one copy may be made for each student. No charge is made to the student except to recover the cost of copying.
- The copying may be done for only one course. The same item cannot be reproduced from term to term. Handouts to be used in subsequent semesters require permission from the copyright holder.
- No more than one work may be copied from a single author. No more than three authors may be copied from a single collective work (e.g., an anthology).
- No more than nine instances of multiple copying may occur during a single term or semester.
- Copies may be placed on password-protected Blackboard sites as long as access is limited to students in the course. Websites open to anyone could be in violation of copyright law.
- For an article, the limit is 2,500 words.
- For a longer work of prose, the limit is 1,000 words, or 10% of the work, whichever is less.
- For a poem, the limit is 250 words.
- For a longer poem, an excerpt of no more than 250 words is allowed.
- For a chart, diagram, cartoon or picture, the limit is no more than one from a book, periodical or newspaper.

These guidelines apply to both print and electronic handouts. "Consumable works," (e.g., workbooks and standardized tests) cannot be copied without permission first being obtained from the copyright holder.

### **Coursepacks**

Currently, USCB does not authorize the use of packets of assigned readings, i.e., "coursepacks," assembled by the faculty member and sold to students through the bookstore. If and when we do, a procedure will have to be developed and put into place. Generally, under the law, coursepacks may be:

- Limited for brevity
- Limited to one semester or term
- Limited to non-profit educational settings
- Subject to acquisition of permissions or licensing

### **Course Web Pages**

Websites are forms of publication and as such are protected by copyright. Instructors are advised to provide links to Web materials found on the Internet rather than copying the actual textual material into course pages.

## **2. SECTION 110: CLASSROOM EXEMPTIONS FOR PERFORMANCE & DISPLAY**

This section covers exemptions for the display (show) and performance (show or play) of works considered essential to the educational process. When a professor presents to students an audio-visual (AV) work, e.g., video, VHS tape, laserdisc, DVD movie, 35mm slide, filmstrip, or 16mm movie, it falls under the "Performance and Display" heading. An AV work is a form of expression and, as such, is protected by copyright. However, as long as the AV item, regardless of the medium (still images, music of every kind, movies, etc.), consists of a lawfully-made copy and the purpose of its use is curricular, the Copyright Act (1976) allows the instructor to share it with students, but only in face-to-face teaching situations. There are no restrictions on the type or length of the work, and the copyright holder's permission is not necessary. On the other hand, the 1976 Act generally prohibits instructors from sharing AV works in distance education teaching situations without the express permission of the copyright holder. (See TEACH ACT below.)

### **The TEACH Act (2002)**

The Technology, Education, and Copyright Harmonization (TEACH) Act (2002) extends classroom exemptions to include, for the first time, the transmission of AV works from one location to another in distance education courses. It permits the performance and display of nearly all types of works in their entirety, as long as:

- they are lawfully made
- the transmission is supervised by the instructor and technologically limited to students enrolled in the class
- the amount transmitted is comparable to what might be displayed in a live classroom setting
- the performance or display is related directly to the instructional activities of the classroom and forms an integral part of the class session offered
- the transmission is only available for a specified period of time, as in a traditional classroom session. The Act does not permit scanning and uploading full or lengthy works to be stored on a Website for students to access throughout the entire semester. Nor does it allow an instructor to scan and upload chapters from a textbook in lieu of having the students purchase that material for their own use.
- the institution provides "notice to students that materials used in connection with the course may be subject to copyright protection". This may be a brief statement included on materials distributed in the class or on an opening frame of the distance education course.
- the institution puts into place technological controls limiting the ability of students to download or share copyrighted content.
- the performance or display is non-dramatic. Non-dramatic literary works might include a poetry or short story reading. Non-dramatic musical works might

include all music other than opera, music videos and musicals (these are dramatic/AV). As for AV and dramatic works (films and videos of all types, stage plays, etc.), the Act only allows for transmission of clips in “reasonable and limited portions” and transmission of displays (still images) in “amounts comparable to typical face-to-face displays.”

The TEACH Act allows authorized persons to copy digital works and digitize analog works for use in distance education as long as the amount that may be converted is limited, that no other digital version is available to the institution or, if one is, it is so technologically protected as to prevent its use in distance education situations. Finally, as explained in “The Teach Act Finally Becomes Law,” the Act does not cover “materials an instructor may want students to study, read, listen to or watch on their own time outside of class. Instructors will have to rely on other rights they may have to post those materials, such as the fair use statute.”

See the University of Texas System’s “The TEACH Act Finally Becomes Law,” at: <http://www.utsystem.edu/ogc/intellectualproperty/teachact.htm>, which also contains a handy checklist for faculty members.

And, take a few minutes to read North Carolina State University’s brief Teach Toolkit Overview, at: <http://www.lib.ncsu.edu/scc/legislative/teachkit/overview.html>

### **3. SECTION 108: LIBRARY EXEMPTIONS**

The Copyright Act (1976) permits libraries to reproduce materials or portions of materials without seeking prior permission of the copyright holder as long as the reproductions are not made for commercial gain and a notice of copyright protection is stamped on the material in question.

Unpublished works currently in the collection may be duplicated in facsimile form for preservation and security or for deposit for research use in another library or archives which is open to the public.

Items in the collection that are published (copy or phonorecord) and have been damaged, lost, stolen or are deteriorating may be duplicated in facsimile form if the library has made a reasonable effort to purchase an unused replacement at a fair price and has been unsuccessful.

A single copy of an article or contribution to a copyrighted work may be made for a user if:

- s/he requests it
- it is the only item from that copyrighted collection or periodical issue
- the copy becomes the property of the user

- the library has no notice that the copy will be used for any purpose other than private study, scholarship or research
- the library displays the "Warning of Copyright Statement" prominently on the copy.

A/one copy of an entire work may be copied and distributed by a library/archive if:

- it is part of a library collection
- the library/archive first determines after reasonable investigation that the copy or phonorecord cannot be obtained at a fair price
- the copy or phonorecord becomes the user's property
- the library/archive has no notice that the copy/phonorecord will be used for any purpose other than private study, scholarship or research
- the library/archive displays prominently the "Warning of Copyright Statement."

Library employees are not liable for copyright infringement for unsupervised use of reproducing equipment located on library premises if the equipment displays a notice that making copies may be subject to copyright law. However, library employees may be liable if they are aware or have a substantial reason to believe that systematic reproduction or distribution of multiple copies is intended.

Interlibrary Loan is acceptable as long as the stated use of the material being borrowed is for the purpose of private study, scholarship, or research. Libraries may not use interlibrary loans as substitutions for paid subscriptions and/or book or AV purchases.

### **Software Copying**

Libraries owning software are permitted to make a back-up archival copy of this software in case the original disk fails to function. Such back-up copies are not to be used on a second computer at the same time the original is in use.

### **Off-Air Recording of Broadcast Programming for Educational Purposes**

A broadcast program may be recorded off-air simultaneously and retained by a non-profit educational institution for 45 days after date of recording. After that, it must be erased or destroyed. Use of the copy is restricted to educational settings where it may only be used once. Requests must come from individual instructors. Other restrictions apply. Be sure to read the "PBS TeacherSource" page covering off-air recordings at:

[http://www.pbs.org/teachersource/copyright/copyright\\_fairuse.shtm](http://www.pbs.org/teachersource/copyright/copyright_fairuse.shtm)

### **Reserve Readings (print and electronic)**

It is always acceptable to put books and other original material on reserve in the library for students to use on-site or to make their own photocopies for personal use.

Articles are available electronically from the library's licensed subscription databases. Faculty members may post links to these databases and provide article citations. In some cases, faculty members may include a direct link to a specific article in a database if the link is posted on a Website restricted to the class.

Books and chapters of books are available electronically from the library's extensive e-book collection. Faculty members may provide students with citations including the URLs for e-books but these books have to be checked out electronically by the individual student, and their access is limited to one user at a time.

#### **4. SECTION 504: GOOD-FAITH FAIR USE DEFENSE**

If a person copies material and reasonably believes that the copying is done in accordance with Fair Use policy, the court may refuse to award damages to whatever degree it chooses, even if the copying does not fall under the Fair Use provision.

#### **APPENDICES**

##### **Sample Permission Letters**

From University of Texas Austin:

<http://www3.utsystem.edu/ogc/IntellectualProperty/permmm.htm>

From Indiana University-Purdue University:

[http://www.copyright.iupui.edu/\\_permitintro.htm](http://www.copyright.iupui.edu/_permitintro.htm)

##### **Copyright Tutorials**

For a concise and well-written overview of copyright law as it applies to academia, take the short "Copyright Tutorial" designed for faculty members at North Carolina State University, at:

<http://www.lib.ncsu.edu/scc/tutorial/index.html>

or the University of Texas System's Crash Course on Copyright "Copyright Tutorial" at:

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