

USE OF COPYRIGHTED WORKS POLICY

Approved by Administrative Council 6/25/18

Effective date 7/1/18

I.

It is the responsibility of the faculty or staff member, or his or her program or unit, to pay for permission fees when they are required. Students may contact their program to request assistance with permission fees.

It is the responsibility of students to not only properly cite copyrighted works, but also to ensure that the use of the work does not violate copyright law. When in doubt, contact a librarian.

It is the responsibility of the faculty member to properly attribute ownership of copyrighted materials in course content and to include a statement visible to students indicating that the material cited is subject to the copyright law of the United States (e.g., on the syllabus or webpage where materials are linked or on the final slide of a presentation).

It is the responsibility of faculty and staff involved in online courses to abide by the provisions of the TEACH Act in addition to the above stated U.S. copyright law and fair use exemptions. These include provisions that govern the amount and intent of the use, as well as requirements to restrict access to enrolled students and reasonably prevent further dissemination of the work. Faculty and staff supporting online courses are also responsible for promoting copyright compliance and notifying students that materials in the course may be subject to copyright protection. For an overview of the TEACH Act, see the section on the TEACH Act in Appendix 1, Guidelines on Copyrighted Material.

It is the responsibility of library staff to provide informational materials to students and

The nature of the work involved determines the level of constraint. Fair use is most generous concerning factual information and most restrictive concerning creative works.

Courts have recognized that the creation of new knowledge depends on the use of existing knowledge.

and fee collection that may be put in place by a publisher. This latter factor may be applicable for works that are out of print. The concept of loss of sale is particularly important in academia for works that have been created expressly for the educational market (such as textbooks). In addition to any impact related to the current work, courts also look at the potential impact on an author or other copyright holder to make future derivative works. This is partially why for educational use it is important to restrict access to current members of the class and to remove access once the class ends.

The more the use alters the context of the work through adding commentary or criticism, the less likely that the courts will view it as having a negative impact on the market. For example, including charts and images from other sources in original instructional materials is likely to be fair use because you are changing the context enough to not interfere with a realistic market for the original work (although you still need to consider the amount you are using from any single source). However, since markets can change, use needs to be periodically reevaluated to determine if there are any potential effects and if they are significant.

Fair use is a defense against copyright infringement, not an exemption from copyright compliance. It is always best to first check for reasonable availability of permission from the copyright holder. It is also important to check the terms of any existing licensing agreements as contract law trumps fair use. Even on a secure network it is better to link to the original work when possible, including to content in a database licensed through the library, rather than posting the work on a website. The availability of guidelines, when they exist, does not replace careful application of the four factors. Retaining a record of your fair use analysis can serve as documentation against future concerns. Educators and librarians are expected to demonstrate good faith efforts by knowing the law and working with the four factors in the statute.

III. The TEACH Act

Another law applicable to educational institutions is the Technology, Education and Copyright Harmonization Act (TEACH Act) of 2002 (Public Law 107-3, Subtitle C, SEC. 13301). This statute adds exemptions for performances and displays used for educational uses by accredited nonprofit institutions. The intention of the act is to enable online courses (“mediated instructional activities transmitted via digital networks”) to mirror the classroom experience. The TEACH Act does not supersede fair use or existing license agreements. The work used must be an amount comparable to that typically displayed in a live classroom setting, be used at the direction or the supervision of an instructor as an integral part of a class session, be directly related and of material assistance to the teaching content, and be limited in transmission reception to students enrolled in the course and related employees. In addition, the institution determining to take advantage of the allowances in the TEACH Act must first take several steps: institute copyright policies, provide informational materials to students and employees that describe and promote copyright compliance, notify students that materials in the course may be subject to copyright protection, and apply technological measures that “reasonably” prevent retention of the work longer than the class session or unauthorized further dissemination of the work.

The works used cannot include any materials such as textbooks/course packs or media which are typically purchased or acquired by students for their independent use.

IV. Obtaining Permission

If your intended use of a copyrighted work does not fall within fair use or any of the other copyright exceptions, and is not in the public domain or contain a Creative Commons license or other statement of permission, you must obtain permission from the copyright holder. Citing a work is not a substitute for obtaining permission. Remain flexible on your selection and intended use in case permission is not granted. You may be able to negotiate with the copyright holder regarding the type or amount of use, or you may have to substitute an alternative work. In case the copyright holder charges for permission, have in mind how much you are willing to pay (and the source of those funds) based on the importance of the work for your intended purpose.

To identify the copyright holder, look for a copyright notice on the work itself. Usually the copyright holder will be the publisher, author or institution or organization to which the author is affiliated. If there is no clear copyright notice, you can check with the U.S. Copyright Office for registered works (www.copyright.gov) or the Copyright Clearance Center (www.copyright.com). Keep in mind that ownership of copyright may have changed hands since original publication.

In drafting a letter of request for permission, communicating complete and accurate information to the copyright holder may facilitate the request. Make sure to include the exact work and how much of it you plan to use, why you want to use it and for how long, and how you intend using the work (handouts, within a lecture slide, etc.). Provision of a self-addressed return envelope will assist in obtaining a reply. A model letter is included in these appendices.

V. References

Association of Research Libraries. (2012). *Code of best practices in fair use for academic and research libraries*. Washington, D.C: Association of Research Libraries.

Copyright Clearance Center. (2005). *The TEACH act: new roles, rules and responsibilities for academic institutions*. Danvers, MA: Copyright Clearance Center.

Lehman, B.A. (1998). *The conference on fair use: final report to the commissioner on the conclusion of the conference on fair use*. Washington, D.C.: U.S. Government Printing Office.

Technology, education, and copyright harmonization act of 2002, Pub. L. No. 107-273, § 13301, C. (2002). Washington, D.C.: U.S. Government Printing Office.

U.S. Copyright Office. (1998). *Summary: the digital millennium copyright act of 1998*. Washington, D.C.: Government Printing Office.

U.S. Copyright Office. (2009). *Reproduction of copyrighted works by educators and librarians* (circular 21). Washington, D.C.: U.S. Government Printing Office.

Factor 4:
Effect

Favoring Fair Use

User owns lawfully acquired or purchased copy of original work

One or few copies made

No significant effect on the market or potential market for copyrighted work

No similar product marketed by the copyright holder

Lack of licensing mechanism

Opposing Fair Use

Could replace sale of copyrighted work

Numerous copies made

Significantly impacts potential market for work or derivative

Affordable permission available for using work

Reasonably available licensing mechanism

Was made accessible on Web or other public forum

Repeated or long term use

Adapted from: Crews, Kenneth D., Copyright Law for Librarians and Educators: Creative Strategies & Practical Solutions, 3rd edition, Chicago: American Library Association, 2012.

APPENDIX 3

GUIDELINES FOR CLASSROOM COPYING

This document, adapted from "Guidelines for Classroom Copying in Not-for-Profit Educational Institutions" (1976) is provided for informational purposes. The stated purpose of the guidelines are to indicate minimum standards for educational use under fair use and not to limit the types of copying permitted. The use of this guideline does not replace application of the four factors of fair use stated in Section 107 of the U.S. Copyright Act (United States Code Title 17).

I. Single Copying for Teachers

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

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

II. Multiple Copies for Classroom Use

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 for classroom use or discussion, provided that:

- A. The copying meets the tests of brevity and spontaneity as defined below;
- B. Meets the cumulative effect as defined below;
- C. Each copy includes a notice of copyright.

Definitions

Brevity

- i. Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages; or, (b) from a longer poem, an excerpt of not more than 250 words.
- ii. Prose: Either a complete article, story, or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event, a minimum of 500 words.

C.

APPENDIX 4

MODEL REQUEST FOR PERMISSION TO USE COPYRIGHTED MATERIAL

Dear Sir or Madam:

I would greatly appreciate your permission for the following educational use:

Title:

Copyright:

Author:

Amount of Work: [i.e., pages 19698, Tables 14, illustration on page 43, Chapter 7, etc.]

Proposed Use: [i.e., copy and distribute to X# students at no cost, post on secured website for student access, incorporate into PowerPoint slide for lecture, etc.]

Purpose: [i.e., enhance lecture, show example of clinical study, etc.]

Timeframe: [i.e., single/multiple classes for current academic year, up to two years, etc.]

This request is for nonexclusive, irrevocable and royalty free permission for non-educational purposes not intended to interfere with other uses of the same work by you.

If you do not currently hold the legal right to grant this permission, please direct me to the current rights holder. Otherwise, your permission confirms that you hold the right to grant the permission requested here.

A duplicate copy of this request has been provided for your records. If you agree to grant the permission requested, please sign below and return one copy in the provided self-addressed envelope.

Name (Printed): _____