

# **COPYRIGHT GUIDE FOR FACULTY**

## **What is copyright?**

Copyright is a form of protection provided by the laws of the United States (Title 17, U.S.C.) to the authors of “original works of authorship.” A work is copyright the moment it is fixed in a tangible form of expression. The copyright law grants exclusive rights to authors, creators and publishers to reproduce all or part of the work, distribute copies, prepare derivative (new) versions, perform and display the work publicly. Copyright protection covers both published and unpublished works. The fact that a previously published work is out of print does not affect its copyright.

## **What can be copyrighted?**

Copyright protection extends to original works that are fixed in a tangible form of expression. These include:

- Literary works
- Musical works, including accompanying words
- Dramatic works, may include accompanying music
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Motion picture and audiovisual works
- Sound recordings
- Architectural works

Copyright does not protect ideas, principles, concepts or discoveries. Copyright does not protect such items as titles, short phrases or slogans, works containing no original authorship such as standard calendars, lists or tables taken from public documents or other common sources.

## **The Duration of Copyright Protection**

If a work was created after January 1, 1978, the duration of copyright, for most works, is the life of the author plus 70 years. For works created before January 1, 1978, duration is for 28 years plus an automatic extension of 67 years.

## **Public Domain**

Works that fall into the public domain are free for all to copy and use. Publications dates 1923 or earlier and most United States documents are in the public domain. Once a work has acquired public domain status it is no longer eligible for copyright protection. It is not safe, however, to assume that works have lost their copyright just because they are old. Works in publications such as a magazine or anthology, may each have separate copyright durations and owners. The fact that one work within the compilation is in the public domain does not necessarily mean the other works are as well. Similarly, the text and illustrations in a book are separately copyrightable.

Absence of a notice of copyright cannot be relied upon to indicate that a work is in the public domain. Works created on or after March 1, 1989 do not require the copyright notice. When in doubt about the status of a work, it is best to contact the publisher’s copyright department to determine whether the work is still under copyright or in public domain.

## **Fair Use**

Fair use is the legal principal that provides certain limitations on the exclusive rights of copyright holders. Fair use allows use of copyrighted materials for educational purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research without permission. Do not assume, however, that a nonprofit, educational use or giving credit for the source of the work, or limiting access to materials to students in your class creates fair use. In determining whether the use made of a work in any particular case is a fair use four factors need to be considered. The four factors are:

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 Four Factors Used in Evaluating Fair Use**

### **What is the purpose and character of the use?**

Copied material for nonprofit, educational use usually favors a fair use finding. Copies used in education, but made or sold at a monetary profit are less likely to qualify as fair use.

### **What is the nature of the work?**

Works consisting primarily of historical data and facts favor a finding of fair use. Use of creative works such as novels, short stories, poetry, art images and other such materials or unpublished works generally require the copyright holder's permission. Consumable materials such, as test forms and workbook pages, should not be copied and distributed.

### **How much of the work is being used in relation to the work as a whole?**

If a small amount of a work is being used, it generally falls under fair use unless a key or essential portion is copied. Copying that includes the essence or the principal element of the work is not considered fair use. The larger the portion being used the more likely permission will be required for use.

### **What is the effect of the use upon the potential market?**

If widespread reproduction of the type of material at issue would reduce the potential market and sales and, therefore, the potential profits of the copyright owner, it is unlikely that it would be fair use.

### **Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions**

According to the Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions (1976), an agreement between an ad hoc committee of publishers, authors and educational institutions, the following copying is authorized. These guidelines state the minimum standards allowable for educational use of copyrighted material.

## **Single Copies for Scholarly Needs**

A single copy may be made of any of the following by or for an instructor at his/her request for his/her teaching or scholarly research:

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

## **Multiple Copies for Classroom Use**

Multiple copies may be made by or for an instructor for classroom use or discussion under the following conditions:

- No more than one copy per student;
- Every copy must include the copyright notice;
- No charge to the student beyond the recovery of photocopy costs;
- Distribution of the same photocopied material may not occur every semester;
- Copying meets the tests of "brevity, spontaneity, and cumulative effect."

## **Brevity Conditions**

### **Poetry**

- A complete poem of fewer than 250 words printed on not more than two pages, or an excerpt of not more than 250 words from a longer poem.

### **Prose:**

- A complete article, story or essay of less than 2,500 words, or 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.

### **Illustration:**

- One chart, graph, diagram, drawing, cartoon or picture per book or periodical issue.

### **Special Works:**

Certain works in poetry, prose or in “poetic prose” which often combine language with illustrations and which are often intended for children, and which fall short of 2,500 words, may not be reproduced in their entirety. However, an excerpt comprising not more than two of the published pages of such a work, and containing not more than 10% of the words found in the text, may be reproduced.

### **Spontaneity Conditions:**

- The copying is at the instance and inspiration of the individual teacher, and
- 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.

For any given material the spontaneity rule may be correctly applied only once by any faculty member. The material cannot be used again without written permission.

### **Cumulative Effect Conditions:**

- The copying of the material is for only one course in the institution, with no more than one copy per student in the course.
- Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during a term.
- There shall not be more than nine instances of such multiple copying for one course during a term.
- Copying may not substitute for the purchase of books, publisher’s reprints or periodicals. Copying should not be used to create or substitute for anthologies, compilations or collective works.

**All copies distributed to students must have a complete citation and notice of copyright on the first page.**

## **Permission for copying must always be obtained in the following instances:**

### **Course packs:**

Copying may not be used to create, replace, or substitute for anthologies, compilations, or collective works. Such replacement or substitution may occur whether copies of various works or excerpts are accumulated or reproduced and used separately. Such copying is prohibited unless permission is obtained. Course packets are recommended when:

- More than ten items need to be distributed to students;
- The same material is regularly used from semester to semester;
- The required material exceeds the brevity or cumulative effect rules.

### **Consumable works:**

There should be no copying of, or from works intended to be “consumable” in the course of study or teaching. These include workbooks, exercises, standardized tests, test booklets and answer sheets, and similar materials.

### **Repetitive copying:**

Copying of the same material by the same instructor from semester to semester is not legal without explicit permission. Any materials used more than once require prior written permission or copyright clearance.

### **Unpublished Works:**

Permission must be obtained from owners of unpublished works in order to copy from them. The copyright law gives automatic copyright protection to unpublished works from the point of their creation through the author’s lifetime plus seventy years.

## **COPYING FAQ**

**Question:** I don't remember the original source for my material but I've been using it for a long time. Can I continue to use it without permission?

**Answer:** No. Repetitive copying of the same material is not legal without permission.

**Question:** Do I need permission if there is no copyright notice on the material?

**Answer:** Yes. The absence of a visible copyright notice does not mean copyright law does not protect the work. All materials created on or after March 1, 1989 are covered by copyright whether or not they have the copyright symbol or statement. Also, the fact that the author is deceased or the book is out of print does not mean that the work is the public domain and may be copied.

**Question:** How do I find out who owns the copyright for a particular work?

**Answer:** Most works contain a notice of copyright. You should consult both the page containing the copyright notice as well as any acknowledgement pages in the work. Contacting the publisher is the best method to determine copyright ownership.

**Question:** Is all copying for educational purposes considered "fair use"?

**Answer:** No, there is no carte blanche exemption for educational purposes. The other three factors in determining fair use must be taken into consideration: the nature of the copyrighted work, the amount copied in relation to the whole, and the effect of use upon the potential market or value of the copyrighted work.

**Question:** The item I want copied it no longer in print. Do I still need permission?

**Answer:** Yes. More than likely there is still a copyright on the material. A thorough investigation of the used book market should be conducted before proceeding. Contacting the usual trade sources, the current copyright holder, or copying services would constitute a reasonable investigation. If a search determines that another copy cannot be purchased at a fair price, then a copy may be made. House Report 94-1476 stated that a fair price is the prevailing retail price for an unused copy or an average cost charged by an authorized copying service. The fair price of a reproduction is the price as close as possible to manufacturing costs plus royalty payments.

**Question:** Some materials are marked: "All rights reserved. No part of this book may be reproduced or utilized in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without permission in writing from the publisher." Can this material still be copied for education purposes?

**Answer:** Yes, as long as such copying constitutes fair use. The quoted language does not change the fair use analysis.

**Question:** Can I scan in a photo or graphic I find in a magazine and put it on my web page?

**Answer:** This would be a clear violation of copyright. If you can find a graphic/photo that is old enough for the copyright to have expired (generally over 75 years old) or is otherwise in the public domain, then this is all right. Otherwise assume the work is copyrighted and seek permission if you want to use it on your web page.

**Question:** What should I do if I want to use materials that contain photographs or illustrations with a copyright owner different from that of the book itself?

**Answer:** Many times photographs or illustrations are covered by copyrights owned by a different party from the copyright owner of the material in which they are published. The author or publisher of that material has received permission from the photographer or illustrator to include it in the work but may or may not have the right to grant permission to others to reproduce the photograph or illustration. In some cases, licensing organizations act for the photographer or illustrator. You may need to make a separate request for permission to copy the photograph or illustration. When a professor copies a photograph, he/she is reproducing the entire work of the copyright owner. Fair use seldom allows the reproduction of an entire copyrighted work. The owner may argue that making and providing copies will deprive the owner of a potential sale and create an adverse effect on the market.

**Question:** I ordered a book that has not arrived in the bookstore. Can I still make copies for the class?

**Answer:** No, not without permission from the publisher.

**Question:** The publisher did not respond to a permission request. Can I make copies anyway?

**Answer:** No. Publishers are not required to respond. No response frequently equals a denial.

## Videos in the Classroom

It is possible to use videos/DVDs from rental stores in the classroom by what is known as the Face-to-Face Classroom Teaching Exemption. Videocassettes from a rental outlet usually bear a label that specifies "Home Use Only." Use of such videos is permitted in an educational institution as long as all of the following conditions are met:

- The video is shown in a non-profit educational institution;
- The video is shown in a classroom or similar place devoted to instruction;
- The showing must be part of a regularly scheduled course and not for entertainment or recreation;
- The showing must be part of the face-to-face classroom teaching activities;
- Attendance must be limited to the instructor and pupils;
- A legitimate copy (not an illegal reproduction), with the copyright notice included, must be used.
- There is no admission or fee charged.

## Items That May Be Placed on Library Reserve

- One poem, short story, or essay from a collected work
- One article from any one journal or newspaper
- One chapter from any one book
- One chart, graph, diagram, cartoon or picture from a book, periodical or newspaper
- Exams, syllabi, lecture notes
- Books/videos that are owned by the Library or the individual instructor
- Any items that are in the public domain

## Items That May Not Be Placed on Library Reserve

- Any copyright material which exceeds the above limits
- Reference books
- Periodicals (current or bound) owned by the Library
- Photocopies which do not meet copyright compliance guidelines
- Interlibrary loan books
- Rental materials
- More than two copies of any one book
- More than two photocopies of the same article
- Course packets
- More than one chapter from the same book
- More than one article from one issue of a periodical other than a newspaper
- Any articles used more than one time
- Material used for more than one course or by several instructors
- Material taken from textbooks
- Material used to create or take the place of an anthology or collected work
- Material intended for one time use, such as worksheets

The copyright notice will appear on the screen in the electronic reserve system and on paper copies made of reserve readings to indicate that materials are covered by copyright law. All materials will be taken off reserve at the end of each semester. Library items will be returned to the stacks; photocopies of articles and personal materials will be returned to the faculty member.

## Computer Software

Unless there is a clear indication to the contrary, assume that all software is protected by copyright. Computer software does not come under the Fair Use exemptions. Computer software must be copied in its entirety in order to work. Copyright law allows a user to load software onto the hard drive of a computer, and retain the original disks as an archive copy. Users are not allowed to modify software, make more copies of it, simultaneously use a single copy both at home and on a campus computer, or distribute the software through the World Wide Web, unless the license agreement explicitly permits those activities.

## **Web Sites/INTERNET**

The ease of posting and copying digital material from the Internet is wide open to copyright infringement. Copyrighted materials are often on the Internet without any indication of their copyright status, such as a copyright notice. You should assume that everything you find on the Internet is copyright, unless otherwise indicated.

Classes offered via the Internet require some method of protection of copyrighted materials used as part of an online class. Some method of password protection must be in place in order to control access to unauthorized use of copyrighted material. Digital video, audio, and visual material linked as part of the course should have copyright clearance.

No laws exist defining fair use of hyperlinks to Internet sites; however, instructors should notify authors of Internet pages if these pages will be used as part of a course.

If you use programs such as Educator or web pages for your classes, these guidelines apply:

- Use materials in the public domain.
- Use materials for which you own the copyright.

If you mount copyrighted materials without securing permission, keep them up for only one semester and restrict your web site to class members only. If you want to use them again, you will need to get permission.

## **PERMISSION**

Unless your use of a work is fair use, or the work is in the public domain, you will need to get permission before using it. Though it is important to properly credit the source of a work, giving credit to an author will not substitute for getting authorization or paying royalties, if such are required.

## **SAMPLE COPYRIGHT PERMISSION LETTER**

Materials Permission Department  
Jones Publications  
1357 S 405th St.  
Chicago, IL 88888

Dear Sir or Madam:

I would like to request permission to copy the following for continued use in my classes for future semesters:

Title: Book or Article

Author:

Journal Title, Issue, Year, Pages

Copyright Holder:

Material to be duplicated (photocopy enclosed):

Number of copies to be duplicated:

Anticipated date of first use:

Distribution: The material will be distributed to students in my classes and they will pay only the cost of the photocopying.

Type of reprint: Photocopy

Use: To be used as supplementary teaching materials.

I have enclosed a self-addressed envelope for your convenience in replying to this request.

Sincerely,

2/2005 SMR