

Cerritos College Library

In the Wilford Michael Library & Learning Resource Center

COPYRIGHT AND FAIR USE

What is Copyright?

The United States Copyright Office notes on its website that copyright is a form of protection provided by the laws of the United States (title 17, U. S. Code) to the authors of "original works of authorship," including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works. Section 106 of the 1976 Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following with regard to their copyrighted works:

- To reproduce all or part of the work
- To prepare derivative works based upon the work
- To distribute copies (including by transmission through the internet) of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending
- To perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works
- To display the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work
- In the case of sound recordings, to perform the work publicly by means of a digital audio transmission.

What is Fair Use?

According to the United States Copyright Office, fair use means that copyrighted material can legally be used in reasonable and limited quantities if it is for educational purposes and not intended for re-publishing or profit. These guidelines allow for certain copyrighted material to be used without permission of the owner of the copyright. Fair use guidelines set specific percentages of work that are allowable but only when used for face-to-face instruction or educational projects.

The U.S. Copyright Office notes on its website that the distinction between 'fair use' and infringement may be unclear because there is no specific number of words, lines, or notes that may safely be taken without permission. Four factors should be considered in determining whether or not a particular use is fair:

1. The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes
2. The nature of the copyrighted work
3. Amount and substantiality of the portion used in relation to the copyrighted work as a whole
4. The effect of the use upon the potential market for or value of the copyrighted work

Fair Use in Education – Copying Guidelines

The purpose of the following guidelines, which appear in the US Copyright Office *Circular 21* along with guidelines for music, images, and other information formats, is to state the minimum standards of educational fair use under Section 107 of H.R. 2223. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future; and conversely that in the

COPYRIGHT AND FAIR USE

future other types of copying may not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

I. SINGLE COPYING FOR TEACHERS

A single copy may be made of any of the following or any part thereof by or for any faculty or staff member at his or her individual request:

- 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 student in a course) may be made by or for the faculty giving the course for classroom use or discussion, *provided that*:

- A. The copying meets the following tests of brevity and spontaneity as defined below; *and*,
- B. Meets the cumulative effect test as defined below; *and*,
- 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: (a) 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.

[Each of the numerical limits stated in "i" and "ii" above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.]

(iii) Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.

(iv) "Special" works: Certain works in poetry, prose or in "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph "ii" above notwithstanding such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof, may be reproduced.

Spontaneity

(i) The copying is at the instance and inspiration of the individual teacher, and

(ii) 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.

COPYRIGHT AND FAIR USE

Cumulative Effect

(i) The copying of the material is for only one course in the school in which the copies are made.

(ii) 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 one class term.

(iii) There shall not be more than nine instances of such multiple copying for one course during one class term.

[The limitations stated in "ii" and "iii" above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.]

III. PROHIBITIONS AS TO I AND II ABOVE

Notwithstanding any of the above, the following shall be prohibited:

A. Copying may not be used to create or to replace or substitute for anthologies, compilations or collective works. A prohibited replacement or substitution occurs regardless of whether copies of various works or excerpts therefrom are accumulated or are reproduced and used separately.

B. There shall be no copying of or from works intended to be "consumable" in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.

C. Copying shall not:

1. substitute for the purchase of books, publisher's reprints or periodicals;
2. be directed by higher authority; or
3. be repeated with respect to the same item by the same teacher from term to term.

D. No charge may be made to the student beyond the actual cost of the photocopying.

What is Public Domain?

The Copyright Clearance Center posts on its webpage that the legal concept of the public domain as it applies to copyright law should not be confused with the fact that a work may be publicly available, such as information found in books or periodicals, or on the Internet. The public domain comprises all those works that are either no longer protected by copyright or never were.

Essentially, all works first published in the United States prior to 1923 are considered to be in the public domain in the United States, as are works published between 1923 and 1963 on which copyright registrations were not renewed. Materials created since 1989, other than those created by the U.S. federal government, are presumptively protected by copyright. Therefore, the likelihood that materials of greatest interest are in the public domain is low. In addition, you must also consider other forms of legal protection, such as trademark or patent protection, before reusing third-party content.

Public domain materials generally fall into one of four categories:

1. Generic information, such as facts, numbers and ideas.
2. Works whose copyrights have lapsed due to the passage of time or the failure of the copyright holder to renew a registration (a requirement that applies to works created before 1978).
3. Works created prior to March 1989 that failed to include a proper notice of copyright.
4. Works created by the U.S. federal government.

Also, in rare instances, works may be "dedicated" (donated) to the public domain.

COPYRIGHT AND FAIR USE

Useful Websites

Go to the online version of this guide for live links:

Copyright and Fair Use

United States Copyright Office

[Copyright Basics](#)

[Fair Use](#)

[Circular 21 - Reproduction of Copyrighted Works by Educators and Librarians](#)

Library of Congress

[How to Understand Copyright Restrictions](#)

Copyright Clearance Center

[Copyright Basics](#)

Copyright Clearance Center

[The Campus Guide to Copyright Compliance](#)

Association of American Publishers

[Questions & Answers on Copyright for the Campus Community](#)

National Association of College Stores

[Questions and Answers on Copyright for the Campus Community](#)

[Guidelines for Classroom Copying With Respect to Books and Periodicals](#)

Stanford University Libraries

[Copyright & Fair Use](#)

Cathy Newsome

[A Teacher's Guide to Fair Use and Copyright](#)

University of Maryland Library

[Copyright and Fair Use in the Classroom, on the Internet, and the World Wide Web](#)

Arizona State University Libraries

[Copyright and Fair Use for Teachers](#)

University of St. Francis

[A Visit to Copyright Bay](#)

Baltimore County Public Schools

[Fair Use Guidelines for Teachers & Students](#) (Chart)

Wakefield Middle School

[Fair Use Chart for Teachers](#) (Chart)

COPYRIGHT AND FAIR USE

Reference Books

The Copyright Handbook

Reference Stacks KF2995 .F53 2006

Intellectual Property Law in Cyberspace

Reference Stacks KF3095 .A77 2000

Patent Trademark and Copyright Laws

Reference Stacks KF3091.9 .P37 2008

Selected Stack Books

The Digital Dilemma: Intellectual Property in the Information Age

South Stacks KF2979 .D54 2000

Getting Permission: How to License & Clear Copyrighted Materials Online & Off

South Stacks KF3002 .S75 2007

Intellectual Property: The Law of Trademarks, Copyright, Patents, and Trade Secrets

South Stacks KF2980 .B678 2005

Finding More Information in Magazines, Journals, and Newspapers

To find articles on copyright and fair use, use one of the databases listed below. These databases usually provide full-text articles on almost every topic. For remote access to the library databases, login to the **Library** using your Cerritos College ID number.

EBSCOhost

Facts.com

Proquest Newspapers