

142-01 COPYRIGHT LAW COMPLIANCE PROCEDURAL GUIDELINES

1. PURPOSE

These Guidelines are to be used in conjunction with Procedure 142-01 (Copyright Law Compliance) to help College instructors, staff, and students understand how copyright law applies to different situations that can arise in an education setting.

Please review Procedure 142-01 and contact the College's Copyright Liaison, the Vice President of Academic Affairs, if you have questions about using copyrighted material.

2. PROCEDURE

What is covered by copyright?

Copyright laws protect original "works of authorship," meaning any work that shows a minimal amount of creativity. This includes works such as

- writings (books, poems, articles, etc.)
- music
- movies
- plays
- photographs
- graphics
- sculptures
- architectural works

Some things do not have the minimal creativity to be copyrightable, including: facts; single words or short phrases like names, titles, and slogans; and listings of ingredients or contents.

A work does not need to have a copyright notice (©) to be protected by copyright. Any work created after January 1, 1978 is automatically covered, whether or not it has a copyright notice. Works can also be registered at the author's option.

A copyright owner has the exclusive right to do or authorize others to do the following:

- Make copies of their work
- Create new derivative works based on their work
- Distribute copies of their work to the public
- Publicly display or perform their work

Instructors and students commonly do many things in the course of their college experience that could implicate these exclusive rights. This can include photocopying articles or books, copying software, sharing electronic files, publicly screening movies, and displaying photographs. However, there are also a few rules and exceptions that allow use of works in an educational setting, with certain restrictions. These are set out in more detail in Procedure 142-01.

What is in the public domain?

Works in the public domain are not protected by copyright and can be freely copied, displayed, and used. Public domain works include:

- Works published before 1923 (if a work is published in or after 1923, it is likely copyright-protected)
- Photographs that are exact reproductions of works in the public domain
- Works produced by the U.S. government

How to safely use copyrighted works?

There are some basic principles to follow when using copyrighted works in the classroom.

1. Use only the minimum amount of a work, for the minimum amount of time, as is necessary to achieve your educational purpose.
2. Use only lawfully acquired copies of works, which can include works the College has purchased or licensed. Do not use pirated or illegal copies.
3. It is safest to seek permission from the copyright owner if you are unsure whether a certain use may be permitted.

Examples

Below are some examples of situations in which using a copyrighted work may or may not be an infringement of a copyright. If you have any questions, please contact the College's Copyright Liaison, the Vice President of Academic Affairs.

Copying

Scenario 1

Facts: A student writes an essay about a particular song and emails a copy of the essay and an mp3 file containing the song to each classmate and the instructor.

Copyright Infringement: Yes.

Reason: Emailing the mp3 file to 20 people creates at least 20 copies of that file. Only the copyright holder has the right to copy the song recording. This is the case even if the student legally purchased the original copy of the song.

Scenario 2

Facts: An instructor photocopies 10 copies of Robert Frost's poem, *The Road Not Taken*, to hand out to students for discussion in the classroom.

Copyright Infringement: No.

Reason: *The Road Not Taken* is a poem of less than 250 words, and therefore it can be copied in its entirety for use and discussion in the classroom of a nonprofit educational

institution, such as the College. See Procedure 142-01 for information on excerpting longer poems and other written works.

Face-to-Face Display

Scenario 1

Facts: An instructor streams a movie through Netflix and plays it for the class in a College classroom.

Copyright Infringement: No.

Reason: Copyright law allows an educator to display copyrighted material to a class in a face-to-face setting without fear of copyright infringement. The same law permits display of a book, photograph, painting, or any other copyrighted work in a classroom setting.

Scenario 2

Facts: An instructor streams a movie through Netflix and plays it for a student club.

Copyright Infringement: Yes.

Reason: The exception allowing an educator to display copyrighted material to a class in a face-to-face setting does not extend to clubs or other student groups. Publicly showing the movie infringes the copyright owner's public display right.

Public Domain

Scenario 1

Facts: An instructor emails all students in a class a PDF version of *The Jungle* by Upton Sinclair for use in the class.

Copyright Infringement: No.

Reason: *The Jungle* was written in 1906 and therefore is in the public domain. It is no longer protected by copyright. With rare exceptions for certain foreign works, most works created before 1923 are in the public domain.

Scenario 2

Facts: An instructor prints 10 copies of *The Great Gatsby* by F. Scott Fitzgerald from a PDF file for distribution to a class.

Copyright Infringement: Yes.

Reason: *The Great Gatsby* was published in 1925 and therefore is still protected by copyright and is not in the public domain. Making copies of the book without authorization is copyright infringement.

Online Education

Scenario 1

Facts: An instructor makes a complete documentary available for viewing on an online class's Blackboard page.

Copyright Infringement: Yes.

Reason: The TEACH Act permits legal display or performance of "reasonable and limited portions" of a work. Thus, making an excerpt of a movie (or book or other work) available for students on Blackboard, if that excerpt is relevant to a specific class portion, would likely be permitted under the TEACH Act. However, showing an entire movie would likely not be permitted.

Scenario 2

Facts: An instructor makes 20 images of modern day Mongolia on Blackboard for viewing during a single online class, and then the instructor removes the images.

Copyright Infringement: No.

Reason: Display of photos for a single class would fall under the TEACH Act exception allowing online displays in a manner similar to a permissible face-to-face display in a classroom. However, the instructor may not leave the images on Blackboard for multiple semesters or otherwise longer than necessary to make the teaching point. Use of works for multiple semesters without permission would violate the photographer's copyrights.

Scenario 3

Facts: An instructor uploads a series of written activities designed specifically for use in online classes to Blackboard without the author's permission. The instructor uses those activities for one class and then removes them.

Copyright Infringement: Yes.

Reason: The TEACH Act does not permit unauthorized use of works produced or marketed primarily for performance or display as part of an online class. If an instructor wishes to use materials designed specifically for distance learning, they should obtain permission or a license to use the material.

Fair Use

Many view fair use as a blanket exception that allows all uses of copyrighted works in an educational setting. That is not correct. Rather, fair use is a defense to infringement that allows the use of excerpts of copyrighted works for purposes such as comment, criticism, and news reporting. Whether a use is fair use is a very fact-specific question, which takes into consideration four factors:

1. Purpose and Nature of Use. Research, criticism, and comment are favored. Commercial use is disfavored. A transformative use that changes the way a work is presented is favored.
2. Nature of the Copyrighted Work. Use of factual or nonfiction works is favored, while use of highly creative works (such as fiction, art, music, novels, films, and plays) is disfavored.
3. Amount Used. Using a small excerpt, or a portion that is not central or significant to the entire work, is favored. Using a large portion or a whole work, or the centrally important “heart of the work,” is disfavored.
4. Effect of Use. Fair use is most likely to be found if the use creates no significant effect on the market for a copyrighted work. Fair use is most likely to be rejected if a use replaces a sale of a work or otherwise impairs an existing or potential market for a copyrighted work or a derivative. **If you copy a work to avoid paying to buy or license a work, that is almost certainly not fair use.**

Each claim of fair use depends on its own facts. Below are several scenarios to help analyze fair use issues.

Fair Use Examples

Scenario 1

Facts: A student makes 100 copies of excerpts of a speech and uses the copies to create a collage of the speech author’s face.

Fair Use: Likely yes.

Reasons: This is a transformative use, i.e., it changes the nature and purpose of the copyrighted work and presents it as a different form of work. The student used excerpts, rather than copying the entire work. Given the transformative nature, the copying likely would not significantly affect the market for the work and may actually increase interest in, and improve the market for, the copyrighted work.

Scenario 2

Facts: An instructor is making a manual on cake decorating for use in a class. He copies eight pages of a 29-page booklet containing recipes and decorating tips and, without the booklet author’s permission, includes them in the manual he is creating.

Fair Use: Likely not.

Reason: The use is not transformative or for critical or commentary purposes, rather the booklet pages are used for the same purpose as the booklet was intended. While the booklet is nonfiction, that would likely not help significantly. The amount taken, over ¼ of the booklet, is substantial. Most importantly, using the booklet pages may interfere with sales of the booklet, as people may choose to purchase the instructor’s manual containing those pages instead.

Scenario 3

Facts: An instructor copies a photograph of an archeological dig from a website and includes the photo in a book about archeology without permission from the photographer.

Fair Use: Likely not.

Reasons: The use is not transformative. While the photo is being placed in a book instead of standing alone, it is not being used for commentary or criticism or for any other purpose than simply as a photo of the location. The amount used is the entire photo. Most importantly, this use could interfere with the photographer's right to license the photo for use in other media, such as books.

Fair use can be a very difficult analysis. If you have questions about any copyright issue, please contact the College's Copyright Liaison, the Vice President of Academic Affairs.

3. BACKGROUND

1. References: Procedure 142-01 Copyright Law Compliance Procedure
2. Revision History: 03/02/2017 (new)
3. Legal Review: 12/14/2016
4. Sponsor: Academic Affairs