

STEPHEN F. AUSTIN
STATE UNIVERSITY

Office of the General Counsel

POLICY SUMMARY FORM

Policy Name: Reproduction of Copyrighted Works by Educators and Librarians

Policy Number: 9.2

Is this policy new, being reviewed/revised, or deleted? Review/Revise

Date of last revision, if applicable: 4/30/2019

Unit(s) Responsible for Policy Implementation: Provost and Executive Vice President for Academic Affairs

Purpose of Policy (what does it do): Policy discusses copyright act of others work.

Reason for the addition, revision, or deletion (check all that apply):

Scheduled Review Change in law Response to audit finding

Internal Review Other, please explain:

Please complete the appropriate section:

Specific rationale for new policy:

Specific rationale for each substantive revision: Text updates for clarification.

Specific rationale for deletion of policy:

Additional Comments:

Reviewers:

Academic Affairs Policy Committee
Lorenzo Smith, Provost and Executive Vice President for Academic Affairs
Damon Derrick, General Counsel

Reproduction of Copyrighted Works by Educators and Librarians

Original Implementation: 1979

Last Revision: April 30, 2019/12, 2022

The Copyright Act (17 U.S.C. §§ 101-1332) affects all types of reproduction and/or use of others' works. The following ~~guidelines~~ *policy* provides general copyright information *and guidelines* useful to the academic community.

Public Domain

~~Public domain refers to creative materials that are not protected by intellectual property laws such as copyright, trademark, or patent laws. Generally, if a work was published without copyright notice under the authorization of the copyright owner and the law does not provide an exception for the omission, the work is in the public domain if published in the U.S. 95 years after the author's death after 1922 (as of 2021, 1926 or earlier) but before March 1, 1989. The presence or absence of a copyright notice is not of significance in determining whether a work is copyrighted or is in the public domain. for works published on or after March 1, 1989.~~

Public domain refers to creative materials that are not protected by intellectual property laws such as copyright, trademark or patent laws. Consult the U. S. Copyright Office website (<https://www.copyright.gov/>) to determine when specific creative materials are in the public domain. The presence or absence of a copyright notice is not of significance in determining whether a work is copyrighted or is in the public domain.

The following factors may be used to determine what constitutes a public domain work:

- works that lack originality (e.g., phone book (*white pages*));
- works that are no longer protected by copyright;
- freeware (must be expressly stated);
- U.S. Government publications;
- facts or theories; or,
- ideas, short phrases, processes, methods, and systems described in copyrighted work that are not otherwise protected by patents.

***Copies in the Library* (17 U.S.C. § 108)**

~~When library staff are copying or digitizing~~ *duplicating materials for a patron, the responsible party* *patron* will include the following:

- any copyright notice on the original;
- appropriate citations and attributions to the source; and,

The library staff member will:

- ~~a Section 108(f)(1) stamp the sentence below on the first piece of each item photocopied, attach it to the glass on the photocopying equipment so that it is automatically transferred to each sheet, attach a sticker bearing this notice to each item photocopied, or use some other method whereby this message is affixed to all reproductions. notice indicating that making a copy may be subject to copyright law.~~

“Notice: This material may be protected by copyright law (Title 17 U.S. Code).”

Fair Use Guidelines (17 U.S.C. § 107)

In determining whether the use of a work is fair use, all four of the following statutory factors should be considered:

- (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.

Single Copying for Instructional Use

The following guidelines can be followed in copying materials by faculty, however the law may allow more or less to be copied than stated in these guidelines. A single copy may be made of any of the following by ~~or for~~ a faculty member at his or her individual request for his or her their scholarly research or instructional purposes:

- (1) a chapter from a book;
- (2) an article from a periodical title or newspaper;
- (3) a short story, short essay or short poem, whether or not from a collective work;
- (4) a chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper;
- (5) a single copy of an excerpt from a musical work, provided the excerpt is less than 10% of the entire work and is less than a performable unit, such as a section, movement, or aria; or,
- (6) a single copy of an entire work, provided a copy cannot be obtained at a fair price.

Multiple Copies for Instructional 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 faculty for classroom use or discussion; ~~provided that~~ copies in excess of this amount may be permissible in some circumstances under fair use. Copying ~~will~~ may not be repeated with respect to the same item for use by the same individual from term to term. In all circumstances other than the specific fair use guidelines described above for single or multiple copies, permission must be obtained from the copyright holder.

General Guidelines for Copyrights Related to Academic Activities

Reproduction by Libraries and Archives (17 U.S.C. § 108)

Under Section 108 of the Copyright Act, the library is authorized to exercise special rights in addition to fair use.

- To archive lost, stolen, damaged, or deteriorating works, if a replacement cannot be obtained at a fair price;
- To engage in isolated and related reproduction or distribution of a single copy for library patrons; and,
- To provide, at the request of another library, a copy of an article or book chapter through interlibrary loan. The library may acquire up to five copies of an article from a journal published within the last five years within a calendar year. If a request exceeds the five copies permitted, the library will pay copyright royalties to the Copyright Clearance Center for subsequent requests.

For works in the last 20 years of protection and not available at a fair price, more generous copying than indicated herein may be performed, provided the purpose of the copying is to support preservation, scholarship, or research.

Reserve Collections

It is strongly recommended that faculty link to items in the library's databases to the university's learning management system instead of duplicating materials for a class. Copies that are digitized for placement in the university's learning management system should be structured to limit access to students registered in the course for which the materials have been placed on reserve and to instructors and staff responsible for the course or the electronic system. The availability of these materials should be limited to the duration of the course.

When ~~digitizing~~ ~~duplicating~~ digitizing copyrighted works for this purpose, the following limitations should be observed:

- single articles or chapters; several charts, graphs or illustrations; or other small parts of a work;
- a small portion of materials required for the course; or,
- copies of materials a faculty member or the library already possesses legally (i.e., by purchase, license, fair use, interlibrary loan, etc.).
- *Digital Rights Management (DRM) protections on materials may not be circumvented.*

Course-pack Guidelines

The Fair Use Guidelines are applicable to course-packs. The faculty/staff member who compiles course-pack materials will be responsible for complying with ~~these~~ *the four factors of Fair Use guidelines.*

Using a commercial copy shop does not necessarily relieve the course-pack creator of liability, unless the ~~above guidelines~~ *four factors of Fair Use* are followed or the copy shop pays appropriate royalties. ~~Campus copy centers are not permitted to copy course-packs, unless these guidelines are followed.~~

Computer Software

Only explicitly stated freeware, not shareware or other licensed software, is allowed to be freely used without a license. Appropriate licenses must be obtained for all other software use. The software user is responsible for reading and complying with all license agreements. Other university computer use policies ~~will~~ also apply.

Guidelines for Music

The university maintains some general licenses for copyrighted music use with Broadcast Music Incorporated (BMI) and American Society of Composers, Authors and Publishers (ASCAP) for specific use areas (College of Fine Arts, Student Activities, etc.). Beyond those areas, use of music must be licensed or specific permission obtained. General guidelines for copying music are outlined below.

Copying will be limited to:

- entire works of sheet music for performance-related emergencies;
- performable units of sheet music (movements, sections, arias, etc.) if out of print;
- recordings of student performances for teacher or institutional evaluation or student's portfolio; and,
- one copy of sound recordings for classroom or reserve room use.

If emergency copies are made, they must be replaced with purchased originals as soon as practical.

Performances and Displays in Face-to-Face Teaching and Broadcasts

Educational institutions and governmental agencies are authorized to publicly display and perform others' works in the course of face-to-face teaching activities, and ~~to a limited degree,~~ in broadcasts ~~where there is a delayed transmission~~ of faculty instruction. These rights are described in Sections 110 (1) and (2) of the Copyright Act: (*The TEACH Act*).

Performances and Displays in Distance Learning (*17 U.S.C. § 110 (1) (2) - the TEACH Act*)

Sections 110(1) and (2) of the Copyright Act ~~may does not cover~~ *supersede* fair use *under 17 U.S.C. § 107* of the ~~performance of others' works in online course materials~~ *copyright act.* For

purposes of distance learning, ~~small~~ parts of others' works may be used for a limited time, and only if a faculty member or the institution possesses a legal copy of the work.

Access will be limited to students enrolled in the class and administrative staff, and will be terminated at the end of the class term.

Digitizing and Using Images for Educational Purposes

An image should be purchased or licensed if it is available at a fair price. If an image is not readily available online or for sale or license at a fair price, it ~~should~~ *may* be digitized ~~and if~~ used according to the following guidelines:

- Access should be limited to students enrolled in the class and administrative staff as needed, and terminate access at the end of the class term (use of "thumbnails" is typically considered fair use and may be used accordingly, without this more stringent restriction).
- Use of these images at conferences is permissible.
- Students may download, transmit, and print these images to complete academic requirements, and may keep works containing images in their portfolios.
- ~~Unnecessary copies are not permissible.~~

Digitizing and Using Others' Works in Multimedia Materials for Educational Purposes

The Conference on Fair Use (CONFU) suggests that: fair use adheres to specific numerical portion ~~limits~~ *guidelines*; copies of the multimedia work should be strictly controlled; and fair use "expires" after two years. Although these are important considerations, CONFU ~~numerical limits~~ *guidelines* do not constitute the outer limits of fair use for educational purposes.

The guidelines herein allow for the creation of unique works within the limitations provided, but not to make or distribute multiple copies. (Multimedia materials that will be licensed, distributed, or sold must obtain appropriate permission from each applicable copyright holder.)

Students, faculty, and staff may incorporate others' works into a multimedia work, and display and perform a multimedia work in connection with or creation of required academic and professional materials.

~~All employees who assist in making copies must comply with the fair use guidelines. All public copy machines or public copy centers on campus must have a warning notice on or near each machine which states that the responsibility for copyright infringement rests with the user. The use of printed copyright warnings transfers a portion of the responsibility for copyright compliance to the~~ _____ ~~individual~~ _____ ~~user.~~

Personal liability for copyright infringement can be created for willful acts. This policy has been formulated to provide specific guidance on the variety of circumstances where fair use is

permissible. The copyright law provides a good faith fair use defense (17 U.S.C. § 504(c)(2)). It applies only if the person who copied material reasonably believed that what he or she did was fair use.

Federal legislation entitled the No Electronic Theft (NET) Act creates criminal penalties for non-commercial copyright infringement of a sufficient dollar value. The academic community must be aware that distribution of pirated computer software or other copyrighted material on computer bulletin boards or other methods of distribution may constitute a federal crime, regardless of whether or not the infringer receives financial gain.

The Digital Millennium Copyright Act (DMCA) limits university liability as an internet service provider for certain copyright infringements created on-line. The university's registered agent for on-line copyright infringement complaints ~~will be~~ is the general counsel. The DMCA establishes procedures whereby, upon receipt of proper complaints, the university will block access to or take down allegedly infringing material and notify the web page owner of the complaint. Alleged infringers may issue a counter-notice, which includes a signature, description of removed material, explanation why the material did not infringe any copyright, and their name, address and phone number, with a consent to the jurisdiction of the court to be sued. Upon receipt of this counter-notice, the university will re-post the material. Repeat infringers will be subject to termination of internet service by the university.

Recording of Broadcasts for Educational Use

Material transmitted for public programming by broadcast stations, cable systems, satellite, or any other transmission medium may be recorded and used for educational purposes in accordance with federal copyright law, except where forbidden by an explicit agreement between the parties originating and receiving the program or information. Broadcast programs are televised programs transmitted by television stations for reception by the general public without charge. Programs may not be recorded from a television satellite/cable unless these programs are authorized for free reception or the institution obtains a license to copy the programs.

The following guidelines must be observed in the off-air recording of broadcast programming for educational use:

- (1) A broadcast transmission may be recorded off-air simultaneously with the broadcast transmission (including simultaneous cable retransmission) and retained by Stephen F. Austin State University (SFA) for a period not to exceed forty-five (45) consecutive calendar days after the date of the recording. Upon conclusion of the retention period, all off-air recordings must be erased or destroyed immediately by the holder of the recording.
- (2) An off-air recording may be used only once by an instructor for relevant teaching activities, but may be repeated one other time when instructional reinforcement is necessary. All use of recordings must be in a classroom or in similar places devoted to instruction during the first

ten (10) consecutive school days in the 45-calendar-day retention period. School days are defined as school session days (not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions) within the 45-calendar-day retention period.

- (3) Off-air recordings may be made only at the request of and used by individual instructors and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same instructor, regardless of the number of times the program may be broadcast.
- (4) An off-air recording may be copied to a limited legitimate number of copies to meet the needs of instructors under these guidelines. Each additional copy will be subject to all provisions governing the original recording and must contain the copyright notice of the broadcast program as recorded.
- (5) If the instructor wishes to add the broadcast program to the curriculum, permission must be obtained from the copyright owner.

Off-air recordings need not be used in their entirety. The recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

Further information can be obtained by accessing the webpage of the U.S. Copyright Office within the Library of Congress at: <http://www.copyright.gov>. The university's general counsel may be contacted with specific inquiries.

Cross Reference: 17 U.S.C. §§ 101-1332; No Electronic Theft (NET) Act, Pub. L. No. 105-147, 111 Stat. 2678; Digital Millennium Copyright Act (DMCA), Pub. L. No. 105-304, 112 Stat. 2860 (1998); CONFU Guidelines, ~~Computer and Network Security~~ *Acceptable Use of Information Resources* (14.2); ~~Computing Software Copyright~~ (9.1); Digital Millennium Copyright (9.3);

Responsible for Implementation: Provost and *Executive* Vice President for Academic Affairs

Contact for Revision: Library Director, General Counsel

Forms: None

Board Committee Assignment: Academic and Student Affairs