Copyright Policy*

Quick Links

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Clark University expects all members of its community to respect the rights of intellectual property ownership by adhering to the United States copyright laws, including amendments made to the laws by the Digital Millennium Copyright Act (DMCA) and the Technology, Education, and Copyright Harmonization (TEACH) Act. Clark University also expects all members of the community to be mindful of the limited rights conferred on them by the “fair use” exemption and other exclusions to the copyright laws.

Works that are subject to copyright protection should only be used with the expressed written permission of the copyright owner or with a documented exception to the copyright law (U.S. Code Title 17 on copyright). While the fair use provision (section 107) is probably the most widely used exception to seeking permission for uses of copyrighted works, especially in the university environment, there are other provisions in the copyright law which outline performance or display exceptions for "face-to-face" classroom settings and distance education (section 110). There are also specific rules for music (section 107, section 112, section 114, and section 115) and works of visual art (section 113).

Not all educational uses are covered by the fair use provision.
Reliance on this exception should be limited to those cases that clearly meet the fair use balancing test and/or compliance criteria associated with the TEACH Act. Faculty, students, and other authorized staff should be familiar with these standards and all are encouraged to document a good faith application of these standards to all Clark-related uses.

Policy in Practice**

Living Clark's copyright policy on a daily basis means that we all make choices about what is and isn't within the spirit of the policy. As you likely know, copyright law is complicated, is governed in large part by case law, and it is riddled with interpretation. In an effort to balance copyright law with fair use principles, Clark University is committed to providing tools and resources to the University community to assist decision-making in this complex environment. To help navigate this complicated space, Clark suggests following the guidelines below (based on the University of Texas "Rules of Thumb", Cornell University's Copyright Guidelines, and guidelines generated by the Conferences on Fair Use (CONFU)).**

Please note that copying, modifying, displaying, performing or distributing another's work beyond the suggestions of the guidelines below may still be a fair use. We advise use of the four- factor fair use test to determine whether a particular use is a "Fair Use".

Fair Use Guidelines for Coursepacks

The Classroom Guidelines that were negotiated in 1976 are written in a very accessible, common sense fashion.These guidelines are what we derive Clark's guidelines for coursepacks from. The guidelines for coursepacks include:

1. **Limit coursepack materials to**
   - single chapters;
   - single articles from a journal issue;
   - single charts, graphs or illustrations;
   - other similarly small parts of a work.
2. **Include**
   - any copyright notice on the original
   - appropriate citations and attributions to the source.
3. Obtain permission for materials that will be used repeatedly by the same instructor for the same class.

Fair Use Guidelines for Materials in CICADA (Course Management Systems)

(based on Cornell's Electronic Course Content Guidelines and the CONFU Educational Fair Use Guidelines for Distance Learning)

Copyright law of the United States (Title 17 of the United States Code) governs making of photocopies or other reproductions of copyrighted material. The making of an electronic copy of a copyrighted work by any means (e.g., scanning, digitizing, ripping, etc.) constitutes reproduction that is governed by copyright law.

The copyright principles that apply to instructional use of copyrighted works in electronic environments are the same as those that apply to such use in paper environments. Any use of copyrighted electronic course content that would require permission from the copyright owner if the materials were part of a printed coursepack (see above) likewise requires the copyright owner's permission when made available in electronic format.

Fair Use factorsfor protection for copying or disseminating copyrighted works without obtaining permission from the copyright owner under certain circumstances apply to both paper and electronic environments.

1. **Permission may be required for the use of copyrighted material as electronic course content even when such material is:**
   - available elsewhere on the internet;
   - being used in a course for the first time; or
   - characterized for purposes of course use as optional, supplemental, or ancillary reading material, rather than as required, assigned, or recommended reading material.

2. **No one should post course content consisting of copyrighted works or portions of such works in electronic form without first either:**

- obtaining the permission of the copyright owner, or
- concluding after reasonable inquiry, with the benefit of resources made available by the university for these purposes, that the use qualifies as a fair use or other exempt or licensed use for which permission is not required.

3. **To the extent technologically feasible, instructors should use passwords, ID numbers, or other appropriate means to *limit access to copyrighted electronic course content to students enrolled in the course or other individuals requiring access to the course materials for purposes of conducting the course.* The availability of such content to students should terminate when the students have completed the course.**

4. **Link to materials already legally available at another site rather than scanning or making a digital copy whenever possible.**

5. **Limit materials to**
   - single articles or chapters; several charts, graphs or illustrations; or other small parts of a work
   - if performance of others' works that a sparing portion is used
   - a small part of the materials required for the course
   - copies of materials that a faculty member or the library already possesses legally (i.e., by purchase, license, fair use, interlibrary loan, etc.).

6. **Copies of copyrighted works, regardless of their format, should include proper attribution and copyright notices.**

7. **Instructors should not direct or encourage students to print unauthorized copies of course content. Students seeking information about how to make or acquire personal copies for purposes of private study, scholarship, or research should be directed to consult available resources.**

8. **Obtain permission for materials that will be used repeatedly by the same instructor for the same class.**

Fair Use Guidelines for Using Images

The CONFU Educational Fair Use Guidelines for Digital Images suggest that fair use requires our libraries to request permission to use images at the same time they are digitized. Our guidelines take a different approach, but in other respects, the Guidelines can provide helpful guidance and we recommend that you read them. For more information about digitizing images and other non-text media, see "Advanced Topics in Copyright Law: The Library, the University Press and the College of Fine Arts are Here to See You, Counselor". The document is full of very useful scenarios that often apply in the course of teaching and learning. In particular, the third section addresses issues that typically arise in the College of Fine Arts.

1. **Is the image you wish to digitize readily available online or for sale or license at a fair price?**
   - **If YES:** Point to, purchase or license the image. Do not digitize it unless you are in the process of negotiating a license. If you have a "contract pending," digitize and use the image in accordance with these Rules of Thumb until the

license is finalized and you have received the licensed digital image.

- **If NO**: Digitize and use the image in accordance with the following limitations:
  - Limit access to all images except small, low resolution "thumbnails" to students enrolled in the class and administrative staff as needed. Terminate access at the end of the class/semester.
  - Faculty members also may use images at peer conferences.
  - Students may download, transmit and print out images for personal study and for use in the preparation of academic course assignments and other requirements for degrees, may publicly display images in works prepared for course assignments etc., and may keep works containing images in their portfolios.

2. **Periodically review digital availability. If a previously unavailable image becomes available online or for sale or license at a fair price, point to or acquire it.**

Fair Use Guidelines for Using Others' Works in Multimedia Materials

The CONFU Fair Use Guidelines for Educational Multimedia suggest that fair use requires adherence to specific numerical portion limits, that copies of the multimedia work that includes the works of others should be strictly controlled, and that fair use "expires" after 2 years. Our guidelines acknowledge that these are important considerations, but the CONFU Guideline numbers do not describe the outer limits of fair use. Despite their tightly controlled approach, the CONFU Guidelines can provide helpful guidance and we recommend that you read them.

Please keep in mind that the guidelines described here are rights to ***create*** unique works, but ***not to make multiple copies and give them out (distribute them)***.

1. **Students, faculty and staff may**
   - incorporate others' works into a multimedia work
   - display and perform a multimedia work

2. **in connection with or creation of**
   - class assignments
   - curriculum materials
   - remote instruction
   - examinations
   - student portfolios
   - professional symposia.

3. **Be conservative. Use only small amounts of others' works.**

4. **Don't make any unnecessary copies of the multimedia work.**

Fair Use Guidelines for Music

The Guidelines for Educational Uses of Musicnegotiated in 1976 can provide helpful guidance and we recommend that you read them.

1. **Limit copying as follows:**
   - sheet music, entire works: only for performances and only in emergencies
   - sheet music, performable units (movements, sections, arias, etc.): only if out of print
   - student performances: record only for teacher or institutional evaluation or student's portfolio
   - sound recordings: one copy for classroom or reserve room use

2. **Include**
   - any copyright notice on the original
   - appropriate citations and attributions to the source.

3. **Replace emergency copies with purchased originals if available.**

Fair Use Guidelines for Research Copies

- **Limit research copies to**
  - single chapters
  - single articles from a journal issue
  - several charts, graphs, illustrations
  - other similarly small parts of a work.

Fair Use Guidelines for Using Others' Works in Reserves

The CONFU Guidelines for Electronic Reserve Systems describe general limitations on the scope of materials that should be included, citation and notice requirements and access, use, storage and reuse of reserve materials. Our guidelines are an abbreviated summary of the CONFU terms which provide helpful guidance that we recommend you review.

1. **Limit reserve materials to**
   - single articles or chapters; several charts, graphs or illustrations; or other small parts of a work
   - a small part of the materials required for the course
   - copies of materials that a faculty member or the library already possesses legally (i.e., by purchase, license, fair use, interlibrary loan, etc.).

2. **Include**
   - any copyright notice on the original
   - appropriate citations and attributions to the source
   - a Section 108(f)(1) notice.

3. **Limit access to students enrolled in the class and administrative staff as**

needed. Terminate access at the end of the class/semester.

4. **Obtain permission for materials that will be used repeatedly by the same instructor for the same class.**

Using the Four Factor Fair Use Test

Our Guidelines do not describe the outer limits of fair use; they describe a "safe harbor" within the bounds of fair use. So, a use that exceeds the suggestions of the guidelines may still be fair.

Fair Use is uncertain - susceptible to multiple interpretations. Two people can review the same facts about a proposed use and come to different conclusions about its fairness. That's because one must make many judgments in the course of weighing and balancing the facts.

Here's how it works:

With a particular use in mind,

- Read each question and the comments about it
- Answer each question about your use
- See how the balance tips with each answer
- Make a judgment about the final balance: overall does the balance tip in favor of fair use or in favor of getting permission?

The four fair use factors:

1. What is the character of the use?
2. What is the nature of the work to be used?
3. How much of the work will you use?
4. What effect would this use have on the market for the original or for permissions if the use were widespread?

FACTOR 1: What is the character of the use?

	• Criticism	
• Nonprofit	• Commentary	
• Educational	• News reporting	• Commercial
• Personal	• Parody	
	• Otherwise "transformative" use	

Uses on the left tend to tip the balance in favor of fair use. The use on the right tends to tip the balance in favor of the copyright owner - in favor of seeking permission. The uses in the middle, if they apply, are very beneficial: they add weight to the tipping force of uses on the left; they subtract weight from the tipping force of a use on the right.

Imagine that you could assign a numerical weight to each use. A nonprofit educational use *other than the middle uses*, for example, making a copy of a journal article for a university class, might weigh 5 in favor of fair use. But a nonprofit educational use that is also criticism, for example, the

inclusion by a faculty member of a quote from another's work in a scholarly critique, would weigh even more in favor of fair use: about 6 or 7. That's because the uses in the middle are "core" fair uses; the ones most dearly protected.

Even if they are for-profit, the core fair uses weigh in favor of fair use: that's why they subtract from the weight against fair use of a commercial use. A commercial duplication of an article from a journal might weigh 5 against fair use. But a commercial commentary or quotation would barely tip the scale, if at all.

This is not to suggest that fair use can be precisely quantitatively analyzed. Numbers are just a tool to illustrate how the facts interact and affect each other. Actually, numbers wouldn't make the analysis any easier: copyright owners and users would have just as much trouble agreeing on weights as we have agreeing on any other judgment about fair use.

FACTOR 2: What is the nature of the work to be used?

- Fact
- Published

- A mixture of fact and imaginative

- Imaginative
- Unpublished

Again, uses on the left tip the balance in favor of fair use. Uses on the right tip the balance in favor of seeking permission. But here, uses in the middle tend to have little effect on the balance.

Which way is your balance tipping after assessing the first two factors?

FACTOR 3: How much of the work will you use?

- Small amount

- More than a small amount

This factor has its own peculiarities. The general rule holds true (uses on the left tip the balance in favor of fair use; uses on the right tip the balance in favor of asking for permission), but if the first factor weighed in favor of fair use, you can use more of a work than if it weighed in favor of seeking permission. A nonprofit use of a whole work will weigh somewhat against fair use. A commercial use of a whole work would weigh significantly against fair use.

For example, a nonprofit educational institution may copy an entire article from a journal for students in a class as a fair use; but a commercial copyshop would need permission for the same copying. Similarly, commercial publishers have stringent limitations on the length of quotations, while a student writing a paper for a class assignment could reasonably expect to include lengthier quotes.

Which way does your balance tip after assessing the first three factors? The answer to this question will be important in the analysis of the fourth factor!

FACTOR 4: If this kind of use were widespread, what effect would it have on the market for the original or for permissions?

- After evaluation of the first three factors, the proposed use is tipping towards fair use

- Original is out of print or otherwise unavailable
- No ready market for permission

- Competes with (takes away sales from) the original
- Avoids payment for permission (royalties) in an established permissions

use	• Copyright owner is unidentifiable	established permissions market

This factor is a chameleon. Under some circumstances, it weighs more than all the others put together. Under other circumstances, it weighs nothing! It depends on what happened with the first three factors.

Here's why:

This factor asks, "If the use were widespread, would the copyright owner be losing money?" Well, actually, it asks, "If the use were widespread, ***and the use were not fair***, would the copyright owner be losing money?" After all, if the use were fair, the copyright owner would not be entitled to any money at all, so he couldn't "lose" what he never would have had to begin with.

When you include in your assumptions the very conclusion that you are trying to reach (you ***assume*** a use is not fair in the process of trying to figure out ***whether*** it ***is*** fair), you violate a principle of logic - you engage in "circular reasoning."

Courts deal with this propensity of the fourth factor to encourage circular reasoning by looking at the first three factors before evaluating the fourth. If the first three factors indicate that the use is likely fair, courts will not permit the fourth factor to convert an otherwise fair use to an infringing one. On the other hand, if the first three factors indicate that the use is likely not fair, courts are willing to consider lost revenues under the fourth factor. In this case they do not have to assume the conclusion in order to reach it. They reach the conclusion based on good evidence that the use is not fair. This means that if a use is tipping the balance in favor of fair use after the first three factors, the fourth factor should not affect the results, even if there is a market for permissions, even if the owner would lose money because of the use.

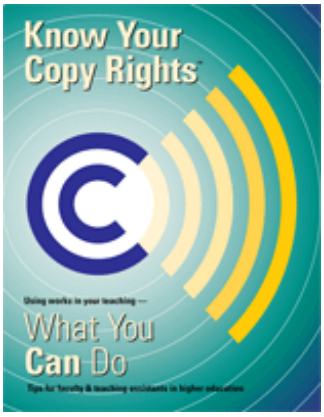
On the other hand, if a use is tipping the balance in favor of asking for permission one need not "assume" it's not fair, the first 3 factors show that it's not. Add to that an active permissions market and the fourth factor will decisively tip the balance. Forget fair use. Get permission.

The facts in the middle illustrate circumstances that also supports fair use, as they indicate a lack of harm to the owner's economic incentive.

Does the balance for your use tip in favor of fair use or in favor of getting permission after consideration of all four factors?

Other Resources

The Association of Research Libraries has partnered with Peggy Hoon, a copyright expert to generate an excellent and easy to follow document linked here that may serve as an additional resource in determining your copyrights and "copywrongs".



The Copyright Management Center at Indiana University has a rich array of resources related to copyright, many of which have been authored by Ken Crews (now at Columbia).

Creative Commons provides free tools that let authors, scientists, artists, and educators easily mark their creative work with the freedoms they want it to carry. You can use CC to change your copyright terms from "All Rights Reserved" to "Some Rights Reserved."

Do you need permission?

You need permission to use a work unless the work is not protected, you can exercise an owners' exclusive right, or your use qualifies for an exemption.

1. Is the work protected?

Copyright does not protect and anyone may freely use:

- Works that lack originality
  - logical, comprehensive compilations (like the phone book)
  - unoriginal reprints of public domain works
- Works in the public domain
- Freeware (not shareware, but really, expressly, available free of restrictions-ware -- this may be protected by law, but the author has chosen to make it available without any restrictions)
- US Government works
- Facts
- Ideas, processes, methods, and systems described in copyrighted works

The presence or absence of a copyright notice no longer carries the significance it once did because the law no longer requires a notice. Older works published without a notice may be in thepublic domain, but for works created after March 1, 1989, absence of a copyright mark does not mean that a work isn't protected by copyright.

Remember that some works are never protected at all! See the information at the beginning of this section for those works.

2. Are you exercising one of the owner's exclusive rights? If so, you don't need permission

These rights include:

1. to reproduce the copyrighted work in copies or phonorecords;
2. to prepare derivative works based upon the copyrighted work;
3. to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
4. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
5. 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, to display the copyrighted work publicly; and
6. in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

3. Does your use qualify for an exemption?

If an exemption does not excuse infringement and eliminate the need to ask permission or pay fees to exercise the owner's rights, you need permission to use the work. The University of Texas site has helpful information on getting permissions.

- **Fair use** (see below)
- **Library's special rights**--Our libraries are authorized to exercise special rights in addition to fair use. These rights are described in Section 108 of the copyright law and include:
  - archiving lost, stolen, damaged or deteriorating works
  - making copies for library patrons
  - making copies for other libraries' patrons (interlibrary loan)
- **Educational performances and displays**--Educational institutions and governmental agencies are authorized by a separate copyright statute to publicly display and perform others' works in the course of face-to-face teaching activities, and to a lesser degree, in digital distance education. These rights are described in Sections 110 (1) and (2), respectively, of the Copyright Act. More information about the recent expansion of Section 110(2)'s rights for digital distance education may be found in in these TEACH Act resources: UNC comparison and University of Texas TEACH resources.

*Even if all or part of a work is not protected by copyright law, it may be protected by other laws. For example, you may need to consider rights of privacy and publicity, ask permission to use a trade or service mark, or get a license to practice a patented process or system, but discussion of these rights and interests is beyond the scope of this Policy statement.

Getting Permission

Below you will find a variety of ways to obtain copyright permissions for your course readers.

Please note that copyright permissions can be time consuming and complex. You should plan on thirty days to research your articles and obtain permissions.

- Utilize the on-campus copy center

- Contract directly with a clearance center
- Do your own research

Utilizing the on-site copy center (Alphagraphics)

Alphagraphics located in the basement of the Higgins University Center provides clearance through the copyright clearance center.

Alphagraphics will:

- Be available for consultation
- Contract with the clearance center
- Apply on line on your behalf for all rights
- Set-up a payment plan directly with the copyright clearance center
- Print and store course readers in the center
- Bill the students directly

In order for Alphagraphics to provide this service the following is needed.

- Title of work/name of author
- ISBN number for a book/ISSN number for a periodical
- Number of pages from the appropriate article
- Number of units you expect to use

Utilizing copyright clearance center

You may contact and contract directly with the copyright clearance center. You will need to provide the same information that you would provide to the copy center.

To contact directly:

- www.copyright.com
- Set-up an account
- Set-up a payment system
- Provide the following information

Title of work/name of author
ISBN number for a book/ISSN number for a periodical
Number of pages from the appropriate article
Number of units you expect to use

Researching on your own

Researching on your own can be time consuming and cumbersome. Copyrights are bought and sold on a regular basis and tracking down the correct right holder can be challenging.

You can contact:

- Utilize the copyright notice to get you started
- Publisher
- www.copyright.gov/records
- The authors registry (www.authorsregistry.org)

There is a lot of information and resources on the internet. If you desire to do your own

permissions, it is worthwhile to spend some time doing research.

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*This policy was reviewed and approved by the President and Provost and endorsed by the Information Technology Committee in December 2008.

***Please keep in mind that the information presented here is only general information. True legal advice must be provided in the course of an attorney-client relationship specifically with reference to all the facts of a particular situation.*