

Guide to Copyright and Fair-Use

Canisius College requires all members of the University community to comply with copyright law. This guide addresses copyright issues pertaining to the use of print materials, especially photocopies, in the classroom and on library reserve. Copyright issues involving Interlibrary Loan, music, off air videotaping, use of audiovisual works, use of educational multimedia, and fair use guidelines are described. For information on copyright and computer software and digital media see the links provided in the *Additional Sources of Information*. This guide has been adapted with permission from the Charleston Southern University.

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What is Copyright?

Copyright is a form of protection provided by the laws of the United States (Title 17, U.S. Code) to creators of "original works of authorship" including literary, dramatic, musical, artistic, and other published and unpublished works, when "fixed in a tangible form of expression." The law gives authors, creators, and copyright holders exclusive rights to their creations which are: reproduction, distribution, adaptation and performance and display. These rights, however, are limited in scope. Sections 107-118 of the Copyright Act establish limitations that in some cases are specified as exemptions from liability. One major limitation is the doctrine of "**fair-use**" which is given statutory basis in Section 107 of the Act. Protection, given to individual, group or corporate authors and to

"works for hire", lasts for the term of the author's life plus 70 years (PL 105-298). A **Public Domain** work is a creative work that is not protected by copyright and may be freely used by everyone. Examples of works in the public domain are works published before 1923 and U.S. Government documents. For more complete information on when works pass into the public domain see <http://www.unc.edu/~unclng/public-d.htm>.

Remember that out of print does not mean out of copyright.

What is Fair Use?

Fair Use (Section 107 of the Copyright Act of 1976) balances the rights of copyright holders with the needs of scholars to promote teaching, research, and the free exchange of ideas. Section 107 of the Copyright act states that the fair-use of a copyrighted work, including use by reproduction in copies, is not an infringement of copyright for purposes such as criticism, comment, teaching (including multiple copies for classroom use), scholarship, or research. Fair use defines particular circumstances in which it is permissible to use copyrighted material, free from permissions and royalties. In determining fair-use, all of the following four factors should be considered:

1. *The purpose and character of the use.* Use of copyrighted material in nonprofit, educational teaching and research is generally considered fair use, while commercial use of the same material would not be covered under the fair use definitions.
2. *The nature of the copyrighted work.* Factual works such as historical data, scientific information, etc. are more often covered under fair use than creative works which are more likely to require permission for use from the copyright holder.
3. *The amount and substantiality of the portion used in relation to the copyrighted work as a whole.* In general the more material used the greater the balance away from fair use.
4. *The effect of the use upon the potential market for or value of the copyrighted work.* Use of copyrighted material that substitutes for the purchase of a book, reprint, or subscription would not be considered fair use.

The following guidelines are based on these points. They illustrate the minimum limits of fair-use for teaching, research, library/media, and archives copying.

Permissible Photocopying

The copyright law allows anyone to photocopy copyrighted works without securing permission from the copyright owner when the photocopying amounts to a "fair use" of the material, and applies to all forms of photocopying, whether undertaken at a commercial copying center, at the University's departmental copying facilities or at self service machines.

Fair-Use Guidelines for Copying

Single Copying for Faculty

Faculty may make single copies for scholarly research or for use in teaching or class preparation. In general copies should be restricted to:

- One chapter of a book; not the entire work
- One article from a periodical or newspaper, not the entire issue
- One short story, short essay or short poem, whether or not from a collective work. (Note that an exception to this is if the short story comprises the entire volume).
- One chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.

Multiple Copies for Classroom Use

Fair use allows multiple copies (not to exceed more than one copy per student in a course) to be made by or for a faculty member for classroom use or discussion, provided that: the copying meets the tests of brevity, spontaneity, and cumulative effect. In addition all copies distributed to students must have a complete citation and notice of copyright on the first page.

Fair Use Tests for multiple copies for classroom use:

Brevity:

1. *Poetry*
 - a. A complete poem if less than 250 words and if printed on not more than two pages
 - b. An excerpt from a longer poem if not more than 250 words
2. *Prose*
 - a. A complete article, story, or essay of less than 2,500 words

- b. An excerpt from any prose work if not more than 1,000 words or 10% of the work, whichever is less
3. *Illustration*

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

Spontaneity:

- a. The decision to use copyrighted materials is made by the professor
- b. There is not reasonable time to seek permission

Cumulative Effect:

- a. The copying is for use in one course with no more than one copy per student
- b. Copying is limited to one complete item or two excerpts by one author
- c. Copying is limited to no more than three items from one collective work or periodical volume during one class term. **Note:** These limitations do not apply to current news periodicals, newspapers, or current news sections of other periodicals.
- d. No more than nine items per course may be distributed.

Permission for making multiple copies is required for:

- a. material which is used for more than one semester
- b. material which exceeds the brevity or cumulative effect tests
- c. use which substitutes for the purchase of a book, reprint, or subscription
- d. Material which comes from consumable sources (workbooks, exercises, etc.)

Course packs which compile readings into an anthology are recommended when more than nine items need to be distributed to students during a semester or the guidelines for permission requirements listed above are indicated. All copyrighted materials reproduced in course packs require copyright permission and/or payment of fees.

Library Reserves

Whenever possible, Canisius College library will place the original source (book or journal) on reserve for a faculty member, rather than a copy of that work. Use of personal copies on library reserve must conform to the fair use classroom guidelines or have copyright permission. At the request of a faculty member, the library will place on reserve a copy of excerpts from copyrighted works in accordance with fair use guidelines. These copies may be placed on reserve for one academic semester and may not be used for additional semesters without permission.

Posting materials electronically on Blackboard or your web page

Faculty who are posting articles, readings, etc. from copyrighted material on Blackboard or faculty web pages should consider the following recommendations:

- a. Use materials in the public domain freely
- b. Use materials freely if you own the copyright (e.g., exams, syllabi, notes)
- c. Whenever possible provide links to full text articles in the library's databases or to other web sites instead of downloading them onto your own site. Instructions for linking full text articles with durable links are provided on the library's web page.
- d. If you do post copyrighted materials without securing permission, keep these online for one semester only and restrict access to this material to the students in your class. A bibliographic citation and notice of copyright should appear on the first page of each item.
- e. When in doubt, seek permission.

Interlibrary Loan:

All interlibrary loan requests, originating at CANISIUS COLLEGE Library's Interlibrary Loan Department, will be processed in compliance with copyright law. The Library will be responsible for all records required by the Copyright Law and the guidelines of the National Commission on New Technological Uses of Copyrighted Works (CONTU Guidelines). These guidelines set a maximum number of five photocopied articles which may be requested in a calendar year from the most recent five years of a periodical that CANISIUS COLLEGE Library does not subscribe to. ILL request forms are available online and in the Library's Reference Department. All requests for copies of articles will contain the following notice:

Copyright Restrictions:

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Under certain

conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be used for any purpose other than private study, scholarship, or research. If a user makes a request for or later uses a photocopy or reproduction for purposes in excess of "fair use" that user may be liable for copyright infringement. This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

Audiovisual Materials

Videotapes, DVDs: Classroom Use

Purchasing, renting, or borrowing from the library a legally made copy of a videotape or DVD does not give the person in possession of the video or DVD the right to show that work to others. The copyright owner determines the circumstances in which the work may be performed. However, use of this type of media in a nonprofit educational institution is allowed, without obtaining permission, under certain conditions as specified in Section 110 (1) of the Copyright Act of 1976 and in House Report (94-1476).

1. They (videotapes or DVD's) must be shown as part of the instructional program
2. They must be shown by students, instructors, or guest lecturers
3. They must be shown either in a classroom or other school location devoted to instruction
4. They must be shown either in a face-to-face setting or where students and teachers are in the same building or general location
5. They must be shown only to students and educators
6. They must be shown using a legitimate (not illegally reproduced) copy with the copyright notice included

There must be a direct relationship between the videotape or DVD and the course. Videos and DVDs, even in a face-to-face classroom setting, may not be used for entertainment or recreation, whatever the work's intellectual content.

Videotapes, DVDs: Use Outside the Classroom

Videos and DVDs, owned by the University, may be viewed by students, faculty, and staff at workstations or in the library lounge on the lower level of the library. Faculty members may also checkout videos and DVDs for viewing at home. Videos or DVDs which are to be shown to a larger audience as part of a special program, lecture series, etc. require permission from the copyright owner for public performance rights. Copying a videotape or DVD without the copyright owner's permission is illegal.

Off-Air Videotape Recording

The following "Guidelines for Off-the-Air Recording of Broadcast Programming for Educational Purposes" were developed by the Kastenmeir House Committee in 1979 and ratified by a House subcommittee in 1981. Using the fair use doctrine, these guidelines provide for classroom use of most off-air videotaped recordings.

1. Videotaped recordings may be kept for no more than 45 calendar days after the recording date, at which time the tapes must be erased.
2. Video taped recordings may be shown to students only within the first 10 school days of the 45-day retention period.
3. Off-air recordings must be made only at the request of an individual instructor for instructional purposes, not by staff in anticipation of later requests.
4. The recordings are to be shown to students no more than two times during the 10-day period, and the second time only for necessary instructional reinforcement.
5. The taped recordings may be viewed after the 10-day period only by instructors for evaluation purposes, to determine whether to include the broadcast program in the curriculum in the future.
6. If several instructors request videotaping of the same program, duplicate copies are permitted to meet the need; all copies are subject to the same restrictions as the original recording.
7. Off-air recordings may not be physically or electronically altered or combined with others to

form anthologies, but they need not necessarily be used or shown in their entirety.

8. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.
9. These guidelines apply only to nonprofit educational institutions, which are further expected to establish appropriate control procedures to maintain the integrity of these guidelines.

Sound Recordings

Copyrighted non-music cassette tapes or CDs may not be copied without permission from the copyright owner, unless replacement recordings from a commercial source cannot be obtained at a fair price. Recording brief excerpts, however, is considered fair use.

A single copy of a music recording may be made for the purpose of constructing aural exercises or examinations. Beyond this one exception, the restrictions on copying non-music recordings apply.

Music

Guidelines for the educational uses of music are included in House Report 94-1476 and allow for the following:

1. Emergency copying to replace purchased copies that for any reason are not available for an imminent performance, provided that purchased replacement copies are substituted in due course.
2. For academic purposes other than performance, single or multiple copies of excerpts of works (no more than 10% of the whole work) may be made, provided the excerpts do not comprise a part of the whole that constitute a performable unit such as a section, movement, or aria. In addition the number of copies shall not exceed one copy per student.
3. Printed copies that have been purchased may be edited or simplified provided that the fundamental character of the music is not distorted, or the lyrics, if any, are altered, or lyrics are not added if none exist.
4. A single copy of recordings of performances by students may be made for evaluation or rehearsal

purposes and may be retained by the educational institution or individual teacher.

5. A single copy of a sound recording (cassette tape or CD) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by an educational institution or individual teacher. This proviso pertains only to the copyright of the music itself and not to any copyright that may exist in the sound recording.

The following situations are prohibited and would be considered copyright violations:

1. Copying may not be used to create, replace, or substitute for anthologies, compilations, or collective works.
2. Copying may not be of or from works intended to be consumable in the course of study or teaching such as workbooks, exercises, standardized tests and answer sheets, etc.
3. Copying for the purpose of performance is prohibited, except in the emergency situation described above.
4. Copying as a way of avoiding purchase is forbidden, given the reasonable availability of the material.
5. No copying is permitted unless the copyright notice, which appears on the printed music, is included.

Educational Multimedia Fair Use

The Fair Use Guidelines for Educational Multimedia apply to the use, without permission, of portions of lawfully acquired copyrighted works in educational multimedia projects which were created by educators or students as part of a systematic learning activity by nonprofit educational institutions.

Students: Students may incorporate portions of lawfully acquired copyrighted works when producing their own educational multimedia projects for a specific course. They may perform and display their multimedia projects in the course for which they were created and may use them in their own portfolios as examples of their academic work for later personal uses such as job and graduate school interviews.

Educators: Faculty members may incorporate portions of lawfully acquired copyrighted works when producing their own educational multimedia projects as teaching tools in support of curriculum-based instructional activities. Educators may perform and display their multimedia projects in the following situations:

1. Face-to-face instruction
2. Assigned to students for directed self-study
3. For remote instruction to students enrolled in curriculum-based courses and located at remote sites provided over the educational institution's secure electronic network. There must be technological limitations on access to the network such as a password or PIN and technological means which prevent the making of copies of copyrighted material.

Educators may perform or display their own educational multimedia projects in presentations to their peers, for example, at workshops and conferences. Educators may also retain their multimedia projects in their personal portfolios for later personal uses such as tenure review or job interviews.

Time Limitations

Educators may use their educational multimedia projects, created for teaching courses, for a period of up to two years after the first instructional use with a class. Use beyond that time, even for educational purposes, requires permission from each copyrighted portion incorporated in the production.

Portion Limitations

Portion limitations mean the amount of a copyrighted work that can reasonably be used in educational multimedia projects under these guidelines without permission.

Motion Media - Up to 10% or 3 minutes, whichever is less

Text Material - Up to 10% or 1000 words, whichever is less. An entire poem of less than 250 words may be used, but no more than three poems by one poet, or five poems by different poets from any anthology may be used. For poems of greater length, 250 words may be used but no more than three excerpts by a poet, or five excerpts by different poets from a single anthology may be used.

Music, Lyrics, and Music Video - Up to 10%, but in no event more than 30 seconds of the music and lyrics from an individual musical work. Any alterations to a musical work shall not change the basic melody or the fundamental character of the work.

Illustrations and Photographs - Fair use usually precludes the use of an entire work, however, under these guidelines a photograph or illustration may be used in its entirety but no more than 5 images by an artist or photographer may be reproduced or incorporated in a multimedia project. When using photographs and illustrations from a published collective work, not more than 10% or 15 images, whichever is less, may be incorporated into an educational multimedia project.

Numerical Data Sets - Up to 10% or 2500 fields or cell entries, whichever is less, from a copyrighted database or data table.

Copying and Distribution Limitations - Only a limited number of copies, including the original, may be made of an educator's multimedia project. There may be no more than two "Use" copies, one of which may be placed on reserve. An additional copy may be made for preservation purposes but may only be used or copied to replace a "Use" copy that has been lost, stolen, or damaged. In the case of a jointly created educational multimedia project, each principal creator may retain one copy.

Downloading Material from the Internet - Educators and students are advised to exercise caution in using digital material downloaded from the Internet in producing their own educational multimedia projects, because there is a mix of works protected by copyright and works in the public domain on the network. Access to works on the Internet does not automatically mean that these can be reproduced and reused without permission or royalty payments. In addition, some copyrighted works may have been posted to the Internet without authorization of the copyright holder.

Attribution and Acknowledgement - Educators and students are reminded to credit the sources and display the copyright notice and ownership information, if this is shown in the original source, for all works incorporated as part of an educational multimedia project. Crediting the source should include full bibliographic description including author, title, publisher, and place and date of publication. The copyright ownership information includes the C, year for first publication, and name of the copyright holder.

Notice of Use Restrictions - Educators and students are advised that they must include on the opening screen of their multimedia project and any accompanying print material a notice stating that certain copyrighted

materials are included, as allowed under the educational multimedia fair use guidelines, and are restricted from further use.

The information in this guide does NOT constitute legal advice. It is provided to assist Canisius College faculty, students and staff in the use of works for educational purposes.

Click for [Additional Sources of Information](#) on Copyright.