

SDCCD Guidelines for Use of Copyrighted Material

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SDCCD Copyright Resources posted to <http://isp.sdccd.edu/copyright>

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SDCCD Guidelines for Use of Copyrighted Material

Based on U.S. Copyright Office Law

<http://www.copyright.gov/>

<http://copyright.com>

These guidelines are to help faculty, staff, and students comply with U.S. copyright law and to make informed decisions about copyright.

The Basics

All persons, including SDCCD employees and students, are responsible for compliance with U.S. Copyright Law. Copyright infringement occurs when one makes an unauthorized copy or reproduction of a copyright protected work without permission of the author/creator.

Copyright protects the authors, creators, and publishers of both published and unpublished original works, including literary, dramatic, musical, and artistic works. Books, newspapers, magazines, software, multimedia, audio recordings, dissertations, research papers, photographs as well as text, video, and images on the Internet are among the works covered under copyright law.

An original source published prior to 1923 and most materials produced by the Federal Government are in the Public Domain and permission to copy is not required. Unless the work is in the Public Domain, permission must be obtained to:

- Reproduce all or part of the work
- Distribute copies (including digitally through the Internet)
- Prepare new versions or change formats based on the original work
- Perform or display the work publicly

Content that is copyrighted in non-digital form is also protected in digital form, even though it may be publicly available on the Internet. A copyright notice is not required for works to be protected.

Determining Who Owns the Copyright

The law does not recognize a “best efforts to obtain copyright” exception, even if it is difficult, time-consuming, or expensive to locate the copyright owner.

Contact the Copyright Clearance Center: <http://www.copyright.com/>. The U.S.

Copyright Office maintains records of registered works:

<http://www.copyright.gov/records>

Fair Use Law for Instruction, Library Reserves, and Research

Section 107 of the Copyright Act lists four factors that determine whether copyrighted material can be used for teaching, scholarship, research, criticism, comment, or news reporting:

1. The purpose and character of the use, including whether such use of is of a commercial nature or is for nonprofit educational purposes;
2. The nature of the copyrighted work (For example, there is a stronger case of fair use if the material copied is from a published work than an unpublished work.);
3. The 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.

The Copyright Act allows anyone to photocopy works without securing permission from the copyright owner when the photocopying meets all of the five tests of Fair Use resulting in compliance with the four factors above:

Fair Use Tests:

1. Brevity
2. Spontaneity
3. Cumulative Effects
4. Notice of Copyright
5. No Charge Beyond Cost of Copying

Brevity:

- Poetry:
 - 1 . A complete poem if less than 250 words and if printed on no more than two pages; and
 2. From a longer poem, an excerpt of no more than 250 words.
- Text Material:
 1. Either a complete article, story, or essay of less than 2,500 words; and
 2. An excerpt from any work of no more than 1,000 words or 10% of the work, whichever is less.
- Illustration:
 1. One chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue.

Additional Brevity Tests for Materials in Online and Web-Enhanced Courses

- Films/Motion Video: up to 10% or three (3) minutes total. No modification such as captions without permission of the copyright holder. Guidelines for obtaining permission to caption posted to <http://isp.sdccd.edu/copyright>.
- Music, Lyrics and Music Video: up to 10%, but no more than 30 seconds. No change to the basic melody or the fundamental character.
- Illustrations and Photographs: May be used in their entirety, but no more than five (5) images from one artist or photographer or website. Not more than 10% or 15 images from a published collective work.
- Text Material: up to 10% or 1,000 words total. Entire poem of less than 250 words. No more than three poems by one poet or five (5) poems from any anthology.

Spontaneity:

- The copying is done at the instance and inspiration of the individual teacher; and
- The inspiration and decision to use the work are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative Effect:

- The copying of the material is for only one course in the school in which the copies are made;
- Not more than one short poem, article, story, essay, or two excerpts may be copied from the same author, and no more than three from the same collective work or periodical volume during one class term; and
- There shall not be more than nine instances of such multiple copying for one course during one class term.

Notice of Copyright: The material includes a copyright notice on the first portion of material photocopied (for example, "© 2012 by Mary Brown").

No Charge Beyond Cost of Copying: Students are not assessed any fee beyond the actual cost of photocopying.

Before submitting items to Reprographics or to the Library reserves, faculty and staff are responsible for ensuring copyright compliance. Any complex questions concerning whether a particular photocopying constitutes fair use should be directed to District counsel.

Examples of Fair Use¹

Before exceeding the following examples, consider the four factors in Section 107 of the Copyright Act listed on page three to make sure that any additional photocopying is justified within the boundaries of fair use.

A. Fair Use for Instruction

Educators have, with publishers, developed the following guidelines, which allow faculty to distribute photocopied material to students in a class without the publisher's prior permission, under the following conditions:

distribution of the same photocopied material does not occur every semester
only one copy is distributed for each student and it must become the student's property
material includes a copyright notice on the first page of the portion of material photocopied (for example, "© 2012 by Mary Brown.")
students are not assessed a fee beyond the actual cost of the photocopying

The photocopying practices of an instructor should not have a significant detrimental impact on the market for the copyrighted work. 17 U.S.C. SS107(4). To guard against this effect, restrict use of an item of photocopied material to one course and do not repeatedly photocopy excerpts from one periodical or author without the permission of the copyright owner.

B. Fair Use for Library Reserves

The District applies copyright guidelines to the library reserve collection to the extent it functions as an extension of the classroom and reflects an individual student's right to photocopy for his/her personal scholastic use under the doctrine of fair use.

In addition to placing the original of a book on reserve, an instructor may place on reserve photocopies of excerpts from copyrighted works in accordance with guidelines similar to those governing formal classroom distribution for face-to-face teaching.

An instructor may place a single photocopy of the following on reserve:

an entire chapter from a book
an entire article
an entire short story, short essay, or short poem
a chart, graph, diagram, drawing, cartoon, or picture in any format including a paper or electronic source

¹ Model Policy Concerning College and University Photocopying for Classroom, Research and Library Reserve Use, American Library Association, Washington Office, Washington, DC, March 1982. ISBN: 0-9389-5624

An instructor may place multiple photocopies on reserve if the copies meet the following guidelines:

the amount of material should be reasonable in relation to the total amount of material assigned for one term of a course taking into account the nature of the course, its subject matter and level, 17 U.S.C. SS107(1) and (3)
the number of copies should be reasonable in light of the number of students enrolled, the difficulty and timing of assignments, and the number of other courses which may assign the same material, 17 U.S.C. SS107(1) and (3)
the material should contain a notice of copyright, 17 U.S.C. SS401 (for example, " © 2012 by Mary Brown.")
the effect of photocopying the material should not be detrimental to the market for the work, 17 U.S.C. SS107(4)

Examples:

- An instructor may place on reserve as a supplement to the course textbook a reasonable number of copies of articles from academic journals or chapters from trade books. **A reasonable number of copies will be in most instances no more than five**, but factors such as the length or difficulty of the assignment, the number of enrolled students and the length of time allowed for completion of the assignment may permit more in unusual circumstances.
- An instructor may request that multiple copies of photocopied, copyrighted material be placed in the reserve collection if there is insufficient time to obtain permission from the copyright owner (see Spontaneity Fair Use Test).
- An instructor may place on reserve several photocopies of an entire article from a magazine or newspaper in lieu of distributing a copy to each member of the class.

C. Fair Use for Research

Individuals may make a single copy for scholarly research, for teaching or preparing to teach a class, or for making a presentation. Most single-copy photocopying for personal use in research—even when it involves a substantial portion of a work—may well constitute fair use. Examples include:

a chapter from a book
an article
a short story, short essay, or short poem, whether or not from a collective work
a chart, diagram, graph, drawing, cartoon, or picture in any format including a paper or electronic source

The following are examples of situations where increased levels of photocopying would continue to remain within the boundary of fair use:

inability to obtain another copy of the work because it is not available from another library or source cannot be obtained within the time constraints
intention to photocopy the material only once and not to distribute the material to others
ability to keep the amount of material photocopied within a reasonable proportion to the entire work (the larger the work, the greater amount of material which may be photocopied)

Uses of Photocopied Material Requiring Permission Beyond Fair Use

Repetitive copying: The classroom or reserve use of photocopied materials in multiple courses or successive years will normally require advance permission from the owner of the copyright, 17 U.S.C. SS107(3)
Copying for profit: Students charged more than the actual cost to photocopy the material will normally require permission from the copyright owner, 17 U.S.C. SS107(1)
Consumable works: The duplication of works that are consumed in the classroom, such as standardized tests, exercises, and workbooks, normally requires permission from the copyright owner, 17 U.S.C. SS107(4)
Creation of anthologies or coursepacks: Creation of a collective of work by photocopying a number of copyrighted articles and excerpts will in most instances require the permission of the copyrighted owners, 17 U.S.C. SS107(4)

How to Obtain Permission Beyond Fair Use

The process of granting permission requires time to check the status of the copyright and to evaluate the nature of the request. It is advisable, therefore, to allow enough lead time to obtain permission before the materials are needed. In instances when there is a fee for the permission, it is not inappropriate to pass this fee on to the students who receive the photocopied material.

Copyright Clearance Center (CCC)

The Copyright Clearance Center has the right to grant permission and collect fees for photocopying rights for certain publications. Individuals may copy from any journal which is registered with the CCC and report the copying beyond fair use to CCC and pay the set fee. A list of publications for which the CCC handles fees and permissions is available from:

<http://www.copyright.com>

– or –

Copyright Clearance Center
310 Madison Avenue
New York, N.Y. 10017

Obtaining Direct Permission from Copyright Owner

In cases where the CCC does not have the legal rights to obtain copyright clearance, permission must be obtained directly from the copyright owner. The request should be sent, together with a self-addressed return envelope, to the permissions department of the publisher in question. If the address of the publisher does not appear at the front of the material, it may be readily obtained in a publication entitled *Literary Market Place (LMP)*, published by the R. R. Bowker Company and available in most libraries. If an email address is available, the request for permission may be sent electronically and the permission response kept on file. See <http://isp.sdccd.edu/copyright> for Sample of Permission Correspondence.

Use of Copyright-Protected Materials in Online or Web-Enhanced Courses²

Instructors using web-based components for classroom instruction and/or instructors who are teaching online courses at the SDCCD may use copyright-protected materials (also called “works”) without permission from the copyright owner and without payment of royalties, with the following limitations:

Instructors must reasonably:

- limit access to copyrighted works to students currently enrolled in the class;
- ensure that the materials used are relevant to the course;
- provide direct supervision of performances or displays of the work;
- use nondramatic literary and musical works (works that are not performed by actors on stage or musicians in concert) in their entirety; for example, novels, poems, song lyrics, musical compositions;
- use limited portions of dramatic works such as videos, plays, concert performances (See section on Brevity for Online and Web-Enhanced Courses); and
- ensure that there is no digital copy of the work available before digitizing an analog original (such as a VCR or cassette tape), copy only an authorized amount of the original for transmission.

See TEACH Act Checklist for Instructors³ at <http://isp.sdccd.edu/copyright>.

Institutional Responsibilities

- Establish policies on the use of copyrighted materials, provide information about copyright, and give notice that certain materials may be protected by copyright;
- Educate the institutional community about copyright;
- Apply technological measures that reasonably prevent retention of the works beyond the class session and further distributing them;
- Ensure that institutional systems will not interfere with technological measures taken by copyright owners to prevent illegal retention and distribution;

² Distance Education and the TEACH Act (Technology in Education & Copyright Harmonization Act of 2002) <http://www.copyright.com/Services/copyrightoncampus/basics/teach.html>

³ Harper, Georgia, University of Texas System (2002), Copyright Crash Course, <http://copyright.lib.utexas.edu/teachact.html>

- Provide a secure server for storage of materials and their permitted transmission;
- Ensure that there is no digital copy of the work available before digitizing an analog original (such as a VHS tape or cassette tape), copy only an authorized amount of the original for transmission; and
- Ensure compliance with the above policies through technological means beyond merely assigning a password; this may include user and location authentication, content timeouts, print-disabling, cut and paste disabling, etc.