

Copyright Guidelines

I. Introduction

The copyright law of the United States (Title 17, United States Code) provides legal protection for authors of original works, including literary, dramatic, musical, artistic, and other intellectual products. An author's copyright in a work arises at the moment the work is created. Publication is not essential for copyright protection. The copyright symbol (©) is also not required for copyright protection to occur, although use of the symbol does grant certain advantages to an author in the event of litigation. An author may transfer copyright ownership to another party. Section 106 of the copyright law grants a copyright owner the exclusive right to do and to authorize others to do the following:

- **Reproduce** copies of the work.
- **Prepare derivative works** based on the copyrighted work.
- **Distribute** copies of the work by sale, rental, lease, or lending or by electronic means.
- **Publicly perform** literary, musical, dramatic or choreographic works, pantomimes, and motion pictures and other audiovisual works.
- **Publicly display** literary, musical, dramatic or choreographic works, pantomimes and pictorial, graphic or sculptural works, including individual motion picture or audiovisual images.
- **Publicly perform** copyrighted sound recordings by means of a digital audio transmission.

However, for a copyright owner, these rights are not absolute. They are subject to “fair use” limitations, which apply to all media and medium-specific limitations.

In addition, authors of works of fine art have certain other rights including the right to prevent intentional distortion, mutilation, or modification of their works. These rights are specific to the author of the work and are not transferable.

II. The Public Domain

Works that are considered in the "public domain" may be used (i.e., copied) freely. The following categories of publications are generally considered to be in the public domain; that is, their use is not protected by copyright law:

- works where the creator has expressly disclaimed a copyright interest;

- works where the copyright has expired. To determine public domain status see the chart at [Copyright Term and the Public Domain in the United States](#)
- works created by the federal government, for example, data files from the 2010 Census
- Note that on January 1st, 2019 works published in 1923 will lose their copyright status, and in 2020, works published in 1924 and so on will expire.

III. Licensed Works

Catholic University pays a fee to provide the campus community with online access to a number of licensed databases. The databases are online at <http://guides.lib.cua.edu/az.php>. Different databases have different terms, conditions, and features. Copyright notices must be maintained on any of the licensed materials.

Reprinting or posting of licensed materials has nothing to do with fair use or the public domain, but is instead based on the contract Catholic has with the provider of the materials.

The University Libraries subscribes to many licensed e-resources (books and databases) that are available to the campus community. Guides for finding materials by discipline, as well as a list of all licensed databases, can be found at <https://guides.lib.cua.edu/>. Different databases have different terms, conditions and features.

Reprinting or posting of licensed materials will not necessarily fall under fair use, but may instead be subject to the terms of the contract CUA has with the provider of the materials.

In most cases, faculty are permitted to directly link to an article in a library database or to an e-book through their course in Blackboard. Please contact your departmental liaison librarian for help in creating a persistent link which will allow for off-campus access to the materials. A list of liaison librarians can be found at <https://libraries.cua.edu/about/sublibs.cfm>. Your liaison librarian can also tell you more about e-reserve services available through the University Libraries.

IV. Fair Use.

The doctrine of "fair use," embedded in Section 107 of the Copyright Act, addresses the needs of scholars and students by allowing use of copyrighted material without obtaining permission from the copyright owner in certain limited circumstances. **What constitutes fair use, however, is expressed in the form of guidelines rather than explicit rules.** To determine fair use, one must consider all of the following four factors, and no one factor is determinative.

A. Purpose and Character

The first factor is the **purpose and character** of the use, including whether the copied material will be for nonprofit, educational, or commercial use. Personal, nonprofit, or educational usage weighs in favor of a finding of fair use. Commercial usage weighs against

a finding of fair use. Criticism, commentary, news reporting, and teaching are considered "core" fair uses, and weigh in favor of a finding of fair use. Copying excerpts into an electronic reserve system for use by students in a particular class is also an example of a use which would be favored as a fair use.

A transformative use of a work also weighs in favor of a finding of fair use. Uses most likely to qualify as transformative are those that repurpose the material. Repurposing can be done by placing the material in a new context, using the material with a different audience from the one it was originally created for, or criticizing, commenting, or otherwise taking issue with the material. For example, a parody of a copyrighted work is generally considered a "transformative" work.

B. Nature

The second factor is the **nature** of the copyrighted work, with special consideration given to the distinction between a creative work and an informational work. Creative works, like fiction and poetry, are granted greater copyright protection than factual works. For example, copies of a newspaper or newsmagazine column are more likely to be considered a fair use than copies made of a musical score, or a short story.

C. Amount, Substantiality, or Portion

The third factor is the **amount, substantiality, or portion** used in relation to the copyrighted work as a whole. This factor requires consideration of the proportion of the use to the larger work, and also requires consideration of the significance of the portion used. Although there are no set percentages, the less material used the more likely that the copying will be a fair use. However, even if a small portion of the work is used, the significance of the use still must be analyzed. If the portion used is the *heart* of the work, it will be less likely to be meet the fair use test.

The less is more rule does not apply to parodies, in which case the heart of the work may be used in a parody. But more use would be allowed when copying a portion of an out of print orphan work, i.e. a work where there is no owner from whom to seek permission and there is no market to consider.

D. Effect of the Use on the Potential Market

The fourth factor is the **effect of the use on the potential market** of the copyrighted work. With respect to this factor, the user must determine whether or not a readily available and reasonably priced license exists for the type of use envisioned. When there is little or no demonstrated demand for a book or for excerpts from it, there will not be a realistic expectation of lost potential revenue from failure to license excerpts. However, the user may not always have this type of data and thus the availability of a license will continue to be a strong factor against a finding of fair use.

Use of content created and marketed primarily for use in courses such as a textbook or workbook is generally unlikely to be a fair use.

Summary of Fair Use Test

Whether or not a particular use is fair under the law is a determination to be made by the person proposing the use.

When relying upon fair use, only students in the class (or other qualified persons such as TAs) should have access to the materials, and access to the materials should be limited in time to the duration of the course. There should always be a clear articulable nexus between the instructor's pedagogical purpose and the kind and amount of content involved. Full attribution to the author should be included, and students should receive a notice about copyright and their responsibilities and rights with respect to course content.

With regard to creative materials, transformative uses are often amenable to a wider scope of fair use, even if the amount used is the entirety of the work, such as a poem. A shorthand version of the four factor test for creative materials is to ask: 1) Is the use transformative? and 2) If yes, is the amount taken appropriate to achieve the transformative purpose?

See <http://counsel.cua.edu/copyright/publications/index.cfm> for guidance on fair use in general and in particular with respect to images, poetry, streaming of films and documentary film making.

V. Seeking Permission

Seeking permission from the copyright owner may be necessary if the work is not in the public domain, the University does not license the work, or fair use does not apply. If it is not clear whether fair use applies, seeking permission is the best course of action. Please contact the liaison librarian to your department for help in determining if materials are licensed for use by the University, finding alternative materials to use in your instruction, or identifying copyright holders. A list of liaison librarians can be found at <http://libraries.cua.edu/about/subjlibs.cfm>.

VI. Copyright Permission Checklist

Here is a checklist to follow when seeking to reproduce, prepare derivative works, distribute copies, publicly perform, or publicly display material that may be protected under copyright law.

- Is the work in the public domain? If yes, then no permission is necessary.
- Is the work licensed through the Washington Library Research Consortium for the particular use in question? If yes, then no permission is necessary.
- If the work is not in the public domain or licensed, may fair use be invoked instead of obtaining permission? If yes, then no permission is necessary.

VII. Computer Software

In the United States, computer programs are literary works protected under the Copyright Act. There is both civil and criminal liability for infringement of the rights of a software copyright owner. Copying software without permission may be a crime even if the person copying the software does not intend to violate the law. Copying an entire software program is highly unlikely to qualify as a "fair use." Catholic U negotiates site licenses with selected software vendors for products that are extensively used at the university, since these arrangements provide the University community with efficient access to computer programs that support the curriculum while assuring the copyright owner a fair royalty.

To find out if a program is licensed, check with the Technology Resources at techsupport@cua.edu. Operate on the assumption that software is copyright protected even if the software has no copyright symbol. Do not make copies of software or install unless permission is sought from the copyright owner, the copying is permitted under a University licensing agreement, or the program is clearly "freeware".*

In those rare instances where it is impossible to determine who the copyright owner is, it may be permissible to copy the software. Libraries are permitted to lend software, but only for temporary use, not for copying or installation. If the borrower transfers, copies or, installs the software, the program must be uninstalled when the borrowed item is returned. Specific restrictions with respect to different software may vary widely. A warning of copyright must be affixed to the packaging that contains the copy of the computer program, which is the subject of a library loan to patrons, by means of a label durably attached to the copies or the container for the copies. The form of the copyright notice is as follows:

NOTICE: Warning of Copyright Restrictions

The copyright law of the United States (Title 17, United States Code) governs the reproduction, distribution, adaptation, public performance, and public display of copyrighted material.

Under certain conditions specified in law, nonprofit libraries are authorized to lend, lease, or rent copies of computer programs to patrons on a nonprofit basis and for nonprofit purposes. Any person who makes an unauthorized copy or adaptation of the computer program, or redistributes the loan copy, or publicly performs or displays the computer program, except as permitted by Title 17 of the United States Code, may be liable for copyright infringement.

This institution reserves the right to refuse to fulfill a loan request if, in its judgment, fulfillment of the request would lead to violation of the copyright law.

* Even if freeware some restrictions may apply.

VIII. Digitization Projects

Both [§107](#) and [§108](#) of copyright law, as well as other considerations, such as the rights conveyed in a deed of gift, may be relevant when considering digitization projects in the library. This section of the Copyright Guidelines sets forth relevant questions to consider (in order) when considering digitizing and posting of materials in the library's collection.

A. Is the item in the public domain? Foreign works are subject to special rules, but U.S. law governs the exercise of copyright rights within the United States. See [Copyright Term and the Public Domain in the United States](#) to determine public domain status of a work. If the item is in the public domain, the item may be digitized and posted.

B. Was there a written instrument of gift? For items created by the donor, look at the written instrument. Sometimes the written instrument of gift is not a deed of gift but simply a letter or memorandum of understanding from a donor. The donor may have granted copyright to the library or otherwise specified his/her intent with respect to use of the document.

C. Is the proposed use a fair use? For documents not in the public domain, and for which the deed of gift is not relevant (i.e. letters written *to* the donor), the four factor fair use test should be considered when analyzing what may be done with a document or other artifact. If there is doubt about the copyright status of a work, consider limiting use to individuals within a certain department or the University community. This may strengthen a fair use argument in that the use of the work will not have a negative effect upon the market, if one exists for the type of use you contemplate.

D. Does the 20 years rule apply to the proposed use?

Section 108 (h) of the Copyright Act addresses reproduction by libraries and archives. This section contains a provision that allows reproduction and distribution of a work that is in the last twenty (20) years of any term of copyright for the purposes of scholarship, preservation, or research, as long as the work is not subject to normal commercial exploitation, a copy of the work cannot be obtained at a reasonable price, or no notice has been given by the copyright owner or agent that either of these two conditions applies to the particular work.

E. Has permission been obtained?

If an owner of the copyright can be identified, permission should be sought for works not in the public domain or subject to fair use or the last 20 years rule.

F. Is this an orphan work?

If an owner of the copyright cannot be identified, then the work is an orphan work. While there is some legal risk to digitizing and posting an orphan work, the risk is minimal and can be weighed against the value of including the item in the project.

G. Other Factors

Other legal factors may also need to be considered, such as invasion of privacy.

IX. Performances

A. In the Classroom

Section 110 of the Copyright Law is very clear that the scope of performance rights in the classroom is very broad. The only limitation is that a legitimate copy must be used.

B. Transmission

When discussing the use of the internet to augment the delivery of classroom materials or in connection with distance education, all portions of a Non-Dramatic Work may be transmitted under the following conditions: (1) the display is an integral part of the class and teaching content, (2) the transmission is solely for students in the class, and (3) technological measures are implemented that prevent retention of the work in accessible form and prevent further dissemination of the work. With respect to Dramatic Works, only a reasonable portion of the work may be transmitted.

C. Public Performances Outside the Classroom

Copyright permission must be obtained for all public performances of dramatic literary or musical works that are not in the public domain and that are not part of classroom instruction.

The showing of a movie on campus to the public without a license is permitted in the following circumstances:

- The movie is shown in the course of face to face teaching and the copy being shown is a legitimate copy;
- The showing is to a small groups of friends or family;
- The movie came with an express license authorizing the showing; or
- The movie is in the public domain.

If one of the above exceptions cannot be met, then a license is needed whenever a movie is being shown, including if the movie is being shown in a public place such as the Pryzbala Center. A license is needed even if you are not charging for the movie. Note that fair use may still apply in one of the above contexts. An example of fair use might be showing a film on campus (but not in the classroom) when the film to be shown is an orphan work and the copyright owner cannot be determined.

D. Definitions:

Non-dramatic Works are all works excluding audiovisual works

Dramatic Works are audiovisual works such as films, videos, opera, music videos, and musicals.

To "**perform**" a work means to recite, render, play, dance, or act it, either directly or by means of any device or process. In the case of a motion picture or other audiovisual work, to "perform" means to show its images in any sequence or to make the sounds accompanying it audible.

X. Penalties for Violation of the Law

If it is determined that an employee willfully disregarded Copyright Guidelines, the employee might not be defended by the University if subject to an infringement claim in accordance with the Employee Indemnification Policy.

The Digital Millennium Copyright Act (DMCA) grants the University certain protections when individual users violate the law using University resources. It is the policy of the University to expeditiously take down or block access to infringing material whenever it is brought to the attention of the University. Any member of the University community subject to a claim of posting infringing material will receive a notice from Technology Services. If the infringing material is not removed in five days, a report about the violation will be sent by Technology Services to the appropriate offices and/or individual: for students: The Dean of Students; for staff, their supervisor and Human Resources; and for faculty and graduate students, to their Department Chair and the Provost.

Subsequent notices of infringement for students will be sent to the Dean of Students who will take appropriate action. Faculty, graduate students, and staff are expected to understand and act in accordance with applicable copyright law. The University is obligated to enact proportionate penalties in response to repeat infringement by infringing individuals. It is the burden of any individual user to demonstrate the alleged infringement is not a violation of the law.

In any case where doubt exists as to whether or not an activity is copyright infringement, the Office of the General Counsel should be consulted.

XI. Resources

Numerous best practice documents are available for reference based upon the type of material being copied. See <http://counsel.cua.edu/copyright/publications/index.cfm> for these resources. Specific resources for librarians are also on this page.