

Best Practices for Teachers Using Copyrighted Material

This document provides guidance for Union College teachers in the use of copyrighted material for educational purposes. It is not legal advice, but does share suggestions which are generally considered to fall under fair use or provisions made for educators within the law. Portions of this document are adapted from Circular 21 (Reproduction of Copyrighted Works by Educators and Librarians) published by the United States Copyright Office which is available online: <http://www.copyright.gov/circs/circ21.pdf>.

Copyright Defined

Copyrighted works must be:

- Original works of authorship
- Fixed in a tangible medium of expression
- Perceived, reproduced, or communicated either directly or through a machine

Items which cannot be copyrighted:

- Ideas
 - Procedures
 - Processes
 - Systems or methods of operation
 - Historical fact
 - United States government documents prepared by employees as part of their official duties
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Copyright Owners' Rights

Authors and owners of copyrighted material have the exclusive rights to reproduce, distribute, perform, or exhibit and to prepare derivative works. Violating any one of these rights constitutes infringement.

Fair Use Doctrine

Fair use is one of several limitations placed on copyright owners' exclusive rights. Fair use is determined case-by-case weighing four factors:

- Purpose and character of use
- Nature of copyrighted work
- Amount and substantiality of the portion used
- Effect upon the potential market

These factors are guidelines which are intended to help users of copyrighted works make decisions about what they do with those works. Case law is abundant and can help users interpret the factors. The *Fair Use Evaluator* (<http://librarycopyright.net/resources/fairuse/>) may also be helpful.

Public Domain and Free Material

Copyright owner's exclusive rights do expire, but that expiration date varies depending on when the work was created. Currently anything published before 1923 is considered in the public domain. More recent works may be in the public domain if the copyright was not renewed or other conditions were not met. See *Copyright Term and the Public Domain in the United States* (<http://copyright.cornell.edu/resources/publicdomain.cfm>)

In addition to the public domain, many people choose to publish their work with a Creative Commons license which informs potential users of the ways in which the work may be used without seeking permission or paying royalties.

Orphan Works

Orphan Works are those for which copyright has not expired but the copyright owner is unidentifiable. This most often happens when the author is deceased and the heirs are unknown. In this case, it is necessary to make a good effort to identify the copyright owner and seek permission. However, if the search is unsuccessful, you may still use the work as long as you retain a record of your effort.

Photocopying

A *single* copy of a chapter, article, short story, essay, poem, chart, graph, diagram, drawing, cartoon, or picture for personal use in scholarly research or teaching preparation may be copied. Note that this is not the same thing as classroom use.

Multiple copies for classroom use meet criteria for brevity, spontaneity, and cumulative effect:

- Copies limited to number of students in the course
- Brevity restricts the amount of a work which may be copied. Typically this is a portion of the work such as 250 words or less of a poem or the lesser of 10% or 500 words of larger works.
- The spontaneity test requires initiation by the teacher and that the time between “the inspiration and decision to use the work” and the best time to use it in the course preclude requesting permission.
- Cumulative effect requires that copying of material be for one course in the school, limits the amount copied from one author or collective work in a semester, and restricts total copying for a single course during a semester to nine instances.

For complete details, read Circular 21 (<http://www.copyright.gov/circs/circ21.pdf>).

When Permission Is Always Necessary

There are a number of circumstances where copying is never allowed without permission and usually the payment of royalties:

- Substitution for the purchase of books, periodicals, or publishers’ reprints. (Example: One student buys a disposable lab workbook and copies report pages for classmates.)
- Copying directed by a higher authority (Example: Teacher requires students to make photocopies.)
- Repeated use of the same material (Example: Spontaneity test may apply the first time you use a work, but permission is required when the same item is used in a future semester.)
- Creating a digital copy (Example: Uploading a file of a journal article to Moodle.)

Public Display or Performance

The use of images, cartoons, fonts, videos, audio recordings, etc. constitutes public displays or performances which may require permission to use. Generally use in a face-to-face teaching situation in an officially designated classroom with an audience limited to students registered for that course allows the instructor more freedom. However, for scenarios not meeting these restrictive requirements, permission is generally needed

and royalties may need to be paid.

When using DVDs from the library’s collection, assume they come with a home-viewing license under which they may be shown during class time with the above restrictions, or students may individually check them out and watch them. A limited number of the library’s DVDs were purchased with public performance rights. Check with a librarian if public performance rights are needed.

Using Alternative Resources and Methods

When possible, link to an online resource in its original location rather than saving it and uploading it to Moodle. When linking to library database resources, be sure to use permalinks or other persistent URLs.

Look for resources with Creative Commons licenses.

Look for freely available resources, but keep in mind that, unless it is specifically stated, they are generally intended for personal and non-profit use.

Obtaining Permission

In the educational world, obtaining permission to copy a resource can be as simple as sending an email message or letter to the copyright owner. This is an acceptable method for the occasional use. If you need to make numerous copies on a frequent basis, organizations such as the Copyright Clearance Center can facilitate the payment of royalties. Regardless of method, keep documentation related to the permissions which have been given:

- Save correspondence whether by mail or email.
- Make sure you abide by requirements of the agreement between you and the owner.
- Note credit and “Used with permission” in publication or on the copy.

Student Use of Copyrighted Material

For assignments and presentations with an audience limited to the instructor and fellow-classmates, the same rules and guidelines apply to students’ work. However, if students will be posting their work online, presenting at a conference, publishing, or submitting it for a competition or award, educational use guidelines no longer apply. Students should carefully consider the fair use of material they are borrowing from others.