

Copyright compliance and file sharing

Library and classroom

The purpose of the SUVA ("SOUTHWEST UNIVERSITY OF VISUAL ARTS") Copyright Compliance Policy: Library and Classroom is to provide a summary of U.S. copyright law as it relates to the use of text-based copyright-protected works in the classroom and library at SOUTHWEST UNIVERSITY OF VISUAL ARTS, and to provide guidelines and procedures for obtaining copyright permission to use these works.

U.S. copyright law contains many gray areas, and the goal of this policy is to provide SOUTHWEST UNIVERSITY OF VISUAL ARTS administrators, faculty, librarians, students, employees, and others with a standard approach for addressing complex copyright issues. This policy covers classroom issues such as photocopying, online and distance education, and course packets. It also covers library uses for print and electronic reserves, ILL and document delivery. Other SOUTHWEST UNIVERSITY OF VISUAL ARTS copyright and intellectual property policies may complement this policy by providing guidance on copyright issues beyond text-based materials used in the classroom and library.

This policy provides practical advice and procedures on copyright-related matters; however, it is not a substitute for legal advice, and proper legal advice should be obtained when necessary.

What is copyright?

Copyright is an area of law that provides creators and distributors of creative works with an incentive to share their works by granting them the right to be compensated when others use those works in certain ways. Specific rights are granted to the creators of creative works in the U.S. Copyright Act (title 17, U.S. Code). If you are not a copyright holder for a particular work, as determined by the law, you must ordinarily obtain copyright permission prior to reusing or reproducing that work. However, there are some specific exceptions in the Copyright Act for certain academic uses, and permission is never required for certain other actions, such as reading or borrowing original literary works or photographs from a library collection.

What is protected by copyright?

The rights granted by the Copyright Act are intended to benefit "authors" of "original works of authorship", including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural and audiovisual creations. This means that virtually any creative work that you may come across—including books, magazines, journals, newsletters, maps, charts, photographs, graphic materials, and other printed materials; unpublished materials, such as analysts' and consultants' reports; and non-print materials, including electronic

content, computer programs and other software, sound recordings, motion pictures, video files, sculptures, and other artistic works—is almost certainly protected by copyright. Among the exclusive rights granted to those “authors” are the rights to reproduce, distribute, publicly perform and publicly display their works.

These rights provide copyright holders control over the use of their creations and an ability to benefit, monetarily and otherwise, from the use of their works. Copyright also protects the right to “make a derivative work,” such as a movie from a book; the right to include a work in a collective work, such as publishing an article in a book or journal; and the rights of attribution and integrity for “authors” of certain works of visual art. Copyright law does not protect ideas, data or facts.

In the U.S., the general rule of copyright duration for a work created on or after January 1, 1978 is the author’s life plus 70 years after the author’s death. This is often referred to as “life-plus-70”. Works created by companies or other types of organizations generally have a copyright term of 95 years. For more information on copyright duration, visit www.copyright.gov/circs/circ15a.pdf.

Fair use

A provision for fair use is found in the Copyright Act at Section 107. Under the fair use provision, a reproduction of someone else’s copyright-protected work is likely to be considered fair if it is used for one of the following purposes: criticism, comment, news reporting, teaching, scholarship and research.

If the reproduction is for one of these purposes, a determination as to whether the reproduction is fair use must be made based upon four factors:

1. The purpose and character of use (principally, whether for commercial or nonprofit educational use);
2. The nature of the copyright-protected work;
3. The amount and substantiality of the portion used; and
4. The effect of the use being evaluated upon the potential market for or value of the copyright protected work.

Fair use is an ambiguous concept and the law does not state exactly what uses of a copyrighted work will be considered fair uses under the law and may therefore be used without obtaining permission. As such, individuals who are not lawyers may often need to be interpreters of the law in everyday circumstances, and answers as to how much reproduction may be considered fair use often remain unclear. The bottom line is that fair use requires a very circumstance-specific analysis as to whether a particular use or reuse of a work may indeed be considered fair use.

To avoid confusion and minimize the risk of copyright infringement, SOUTHWEST UNIVERSITY OF VISUAL ARTS interprets the following situations as fair use:

- Quotation of short passages in a scholarly or technical work for illustration or clarification of the author’s observations.
- Reproduction of material for classroom use where the reproduction is unexpected and spontaneous – for example, where an article in the morning’s paper is directly relevant to that day’s class topic. This would generally cover one time use in only one semester.
- Use in a parody of short portions of the work itself.
- A summary of an address or article, which may include quotations of short passages of the copyright-protected work.

If your use does not meet the above criteria and the work is protected by copyright, you probably need to obtain permission to use the work from the copyright holder or its agent.

Types of use

Classroom Handouts:

Based on SOUTHWEST UNIVERSITY OF VISUAL ART's fair use analysis, classroom handouts fall into two categories; one that requires permission and one that does not. If the handout is a new work for which you could not reasonably be expected to obtain permission in a timely manner and the decision to use the work was spontaneous, you may use that work without obtaining permission.

However, if the handout is planned in advance, repeated from semester to semester, or involves works that have existed long enough that one could reasonably be expected to obtain copyright permission in advance; you must obtain copyright permission to use the work.

Course Packets:

All articles, chapters and other individual works in any print or electronic course packet require copyright permission. Copyright permission for course packets is usually granted by the academic period. To reuse a course packets in subsequent academic periods (e.g.: semester, quarter, trimester, etc.), you probably need to obtain permission again. Many copyright holders provide time-sensitive permission because their own rights may be time-sensitive and could be transferred to different copyright holders at any time.

When ordering course packets it is important to clarify who will obtain permission for the course packets – the copy shop or reprographic center, the faculty member or a member of the administrative staff. Deferring responsibility for copyright permission will not provide you protection against a claim of copyright infringement.

Photocopying In the Library:

It is permissible to photocopy copyright-protected works in the SOUTHWEST UNIVERSITY OF VISUAL ARTS library without obtaining permission from the copyright owner, under the following circumstances:

- Library user requests for articles and short excerpts. At the request of a library user or another library on behalf of a library user, the SOUTHWEST UNIVERSITY OF VISUAL ARTS library may make one reproduction of an article from a periodical or a small part of any other work. The reproduction must become the property of the library user, and the library must have no reason to believe that the reproduction will be used for purposes other than private study, scholarship and research. As recommended by Section 108 of the Copyright Act, the library must display the register's notice at the place library users make their reproduction requests to the library.
- Archival reproductions of unpublished works. Up to three reproductions of any unpublished work may be made for preservation or security or for deposit for research use in another library or archive. This may be a photocopy or digital reproduction. If it is a digital reproduction, the reproduction may not be made available to the public outside the library or archive premises. Prior to receiving any of the three reproductions permitted under this provision from another library or archive, the SOUTHWEST UNIVERSITY OF VISUAL ARTS library or archive must make a reasonable effort to purchase a new replacement at a fair price. The reproducing library or archive must also own the work in its collection.
- Replacement of lost, damaged or obsolete copies. The SOUTHWEST UNIVERSITY OF VISUAL ARTS library may make up to three reproductions, including digital reproductions, of a published work that is lost, stolen, damaged, deteriorating or stored in an obsolete format. Any digital reproductions must be kept within the confines of the library (that is, available on its computer but not placed on a public network.)
- Library user requests for entire works. One reproduction of an entire book or periodical may be made by your library at a library user's request, or by another library on behalf of a library user upon certain conditions being met. These conditions include the library determining after reasonable investigation that an authorized repro

duction cannot be obtained at a reasonable price. Once made, the reproduction must become the property of the library user. The library must have no reason to believe that the reproduction will be used by the user for purposes other than private study, scholarship and research, and the library must display the register's notice at the place library users make their reproduction requests to the library.

Photocopying for students

SOUTHWEST UNIVERSITY OF VISUAL ARTS library may make reproductions for library users (students, faculty, etc.), provided the following criteria are met:

- The library makes one reproduction of an article from a periodical or a small part of any other work.
- The reproduction becomes the property of the library user.
- The library has no reason to believe that the reproduction will be used for purposes other than private study, scholarship and research.
- The library displays the register's notice at the place library users make their reproduction requests to the library.

Photocopying by students

Photocopying by students is subject to a fair use analysis as well. A single photocopy of a portion of a copyright-protected work, such as a copy of an article from a design journal made for research, may be made without permission. Photocopying all the assignments from a book recommended for purchase by the instructor, making multiple copies of articles or book chapters for distribution to classmates, or copying material from consumable workbooks, all require permission.

Document Delivery Services

It is important to maintain a distinction between ILL and Document Delivery Services (DDS). Photocopying for DDS requires copyright permission. ILL (Interlibrary Loan): The SOUTHWEST UNIVERSITY OF VISUAL ARTS library may participate in interlibrary loans without obtaining permission provided that the "aggregate quantities" of articles or items received by the patron do not substitute for a periodical subscription or purchase of a work. SOUTHWEST UNIVERSTIY OF VISUAL ARTS follows the CONTU guidelines for defining "aggregate quantities." The CONTU guidelines state that requesting and receiving more than five articles from a single periodical within a calendar year or a total of six or more copies of articles published within five years prior to the date of request would be too many under CONTU.

If the articles or items being copied have been obtained through a digital license, you must check the license to see under what terms and conditions, if any, interlibrary loan is permitted.

Distance Education and Course Management Systems

In 2002, the Technology, Education and Copyright Harmonization (TEACH) Act became law and expanded the latitude universities, including SOUTHWEST UNIVERSITY OF VISUAL ARTS, have for the performance and display of copyright-protected materials in a distance education environment, including through the use of Course Management Systems (CMS). The copyright requirements for TEACH and CMS postings are similar to those of classroom handouts, but extend the traditional rules for those handouts to the digital transmission of materials to distance education students. If the use is spontaneous and will not be repeated, copyright permission is not required; however, the content may not remain posted for extended periods of time. If the use is planned, repeated or involves works that have existed long enough that one could reasonably expect to receive a response to a request for copyright permission, you must obtain copyright permission.

Copyright and Foreign Works

The U.S. is a member of the leading international copyright treaty, the Berne Convention. As such, when SOUTHWEST UNIVERSITY OF VISUAL ARTS uses a copyright-protected work from another country, the protections provided to works by U.S. copyright law automatically apply to the use of that work as well (assuming the use takes place in the U.S.). Copyright Clearance Center has many reciprocal licenses to allow use of materials from other countries.

How to obtain copyright permission

Permission to use copyright-protected materials, when required, should be obtained prior to using those materials. It is best to obtain permission in writing (including e-mail) and to ensure that the SOUTHWEST UNIVERSITY OF VISUAL ARTS has a copy of each permission form or letter.

The time to obtain permission may vary and, where possible, it is recommended to start the permissions procedure at least six months prior to the time that you wish to use the materials. If you need a quicker permission, let the copyright owner know this and he/she may be able to get back to you more quickly. Often, Copyright Clearance Center is your quickest one-stop resource for obtaining copyright permission.

Fact Finding Questions

Once you have identified the materials you want to use and determined that copyright permission is required, you must locate the copyright holder. If the copyright holder is not listed on the work, locating the appropriate person or entity to grant permission may take some investigative and creative work.

The Copyright Office of the Library of Congress (www.loc.gov) may be of assistance in locating a copyright owner if the work is registered. Note, however, that copyright is automatically granted to all works upon their being written down and that registration with the Copyright Office is not required.

There are two primary options for obtaining permission to use the work. You may contact the copyright holder directly or you may contact Copyright Clearance Center. Check with your department manager to determine if your institution already has an established process for obtaining copyright permission through Copyright Clearance Center. If your department or campus does not have a centralized location or process for obtaining copyright permission, you may create an account with Copyright Clearance Center at www.copyright.com.

Information in your Permission Request

The copyright holder or its agent will require the following information in order to provide you with permission:

- Title of the material
- Creator/author of the material
- Publisher of the material
- Description of material
- ISBN or ISSN, if applicable
- Date of publication, if applicable
- Purpose for which you wish to reproduce the item (research, commercial, educational, etc.)
- How the material is to be reproduced (e.g., photocopied, digitized)
- Where the reproduced material will be used or will appear and for how long

Peer-to-Peer (“P2P”) File Sharing

The issue of P2P file sharing is receiving increasing attention in the U.S. and around the world. P2P file sharing is not itself illegal. However, it is often used for unauthorized downloading and uploading of copyright-protected material such as music, movies, video games, computer software and photographs. Several courts have determined that substantial P2P file sharing of copyright-protected works generally does not fall within the fair use defense.

Students who engage in substantial P2P file sharing of copyright-protected materials may be subject to serious liability. SUVA is under no obligation to accept responsibility for, or to help defend, the activities of students in illegal file sharing.