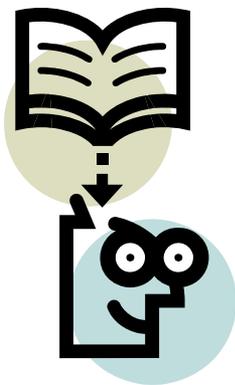


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Copyright Policy and Course-Packs

A Practical Guide





*Copyright Policy and Course-Packs:
The answers to your questions.*

Copyright Policy and Course-pack Info Sheet

Seattle University's Copyright Policy can be found at: www.seattleu.edu/policies/copyright.asp.

Copyright Clearance Due Dates for Course-packs

New Course-packs containing previously un-cleared material	8 Weeks prior to the Start of the Quarter
Repeat Course-packs containing material cleared in previous quarters	3 Weeks prior to the Start of the Quarter

All faculty are expected to comply with the University's Copyright Policy, and the Reprographic Department is available to assist in that compliance. Obtaining the proper permission to reproduce copyrighted material is very important. Until 1991, many professors and photocopy shops assembled and sold course-packs without obtaining permission from the authors or publishers. The professors assumed that educational copying qualified as a "fair use" under copyright law, regardless of the circumstances. In 1991, a federal district court ruled that a publisher's copyright was infringed when a Kinko's copy shop reprinted portions of a book in an academic course-pack. *Basic Books Inc. v. Kinko's Graphics Corp.*, 758 F.Supp. 1522 (S.D. N.Y. 1991).

The court's decision was controversial, but in 1996 the Sixth Circuit Court of Appeals ruled against another copy shop owner, holding that the shop's copying for academic course-packs did not qualify as a fair use. *Princeton Univ. v. Michigan Document Servs.*, 99 F.3d 1381 (6th Cir. 1996).

The law is well settled that not all academic use of copyrighted materials is fair use. If you are reproducing someone else's work for an academic course-pack, you must get permission for each work unless you are confident that the work falls within an exception to copyright laws (e.g., if it is a government publication, or it is in the public domain, or the author has given you permission). Reprographic will clear copyrighted materials for your course-pack. We request that you supply us with **original source materials**. If these are not available, ISBN or ISSN numbers, publication date, volume numbers, issue number (if a periodical), and page numbers are elements needed to clear copyrights. The time frame required to obtain permission depends on who holds the rights to the materials. **The deadline for submission of materials for copyright clear-**

ance is **eight weeks** prior to the start of a quarter for course-packs containing material that has not been cleared previously. The deadline for repeat materials is **three weeks** prior to the start of the quarter. The sooner you are able to get your materials in, the more **proactive Reprographic can be**. Please note that the Reprographic staff is happy to work with faculty in making changes to course-packs prior to the placement of the final order. Reprographic will provide each faculty member with an estimate of the permission fees prior to placing the final order. Please note, however, that once Reprographic incurs permission fees for a course-pack, the academic department is responsible for payment even if the faculty member decides to withdraw the work from the course-pack. If you would like to obtain copyright permissions yourself, Reprographic staff are happy to walk you through the process.

Production

The Reprographic Department will produce your course-pack to your specifications once any necessary permissions are obtained.

SuperCopy, the retail side of the Reprographic Department, serves as the retail sales outlet for copyright-cleared course-packs produced in Reprographic.

Off-Campus Sources

Seattle University has selected three off-campus copyright services to assist with copyright clearance and production.

XanEdu

www.xanedu.com

XanEdu is an online source for creating course-packs that are digital or printed or a combination of both.

University Readers

<http://seattleu.universityreaders.com>

University Readers offers digital course-packs and printed course-packs with 10% of the course-pack available free online to students if the printed packs are not available by the first day of class.

University Custom Publishing

www.uscbookstore.com

UCP is a division of the University of Southern California and offers printed course-packs.

Off-campus sources offer a turnaround of five days for printed packs with non-copyrighted materials, a turnaround of two weeks for packs with previously cleared copyrighted material, and up to eight weeks for printed packs with previously un-cleared copyrighted materials.

A Note About Costs

Copyright permissions vary widely in cost depending on who holds the rights. Many individual rights-holders will grant permission to an academic institution to use their work without charge. Others will charge a nominal fee of \$0.10 per page, per copy. Still others charge market rates that can materially increase the price of the course-pack to students. Harvard Case Studies range in price from \$4.00 to \$6.00 per case study/per copy. Major metropolitan newspapers, such as *The New York Times* and *The Washington Post*, charge \$1.00 per page, per copy. Prominent journals and magazines such as *The Economist* charge \$2.00 per page, per copy.

Most copyrights are owned by the publisher. Publishers vary in how they charge for permissions. Many charge per page and per copy while others charge a flat fee. Depending on materials selected for use in a course-pack, permissions can significantly increase the cost of the pack. You may want to research the cost of permissions before making a final decision about content of your course-pack. Reprographic will be happy to supply you with an itemized estimate for your approval prior to the printing of the course-packs.

Many people are surprised to learn that if the exact same material from a prior copyright-cleared course-pack is used in a new pack, copyright fees must be paid again. Generally, copyright permissions are obtained on a per-use basis, and just because we are granted permission for certain material at a certain price one year does not guarantee that we can obtain permission again the following year for the same price.

Some Money Saving Tips

Although copyright permissions can be expensive, there are options available to faculty and students other than traditional course-packs. The Reprographic staff will be happy to provide cost-effective alternatives for expensive resource materials. The two most cost effective options available to the campus community are the Lemieux Library and the Inter-

net. For example, assume you have an article from *The Economist* that you wish to reproduce in a course-pack. *The Economist* charges a permission fee of \$2.00 per page per copy. This means that if you are reproducing a five-page article for 50 students the total fee is \$500. Although this cost is divided among the course-packs, each student pays \$10 for a five-page article. The good news is that, thanks to the many databases available through the Lemieux Library, students may not have to pay this fee. A professor can direct the students to an online database such as ProQuest, where the students can read and print the article for free for their own use. Please note that students are also subject to copyright laws, and their duplication or reproduction of a protected work must also comply with the law. A list of the available databases can be found here: <http://www.seattleu.edu/lemlib/Find/Articles/DBbyTitle.htm>

ANGEL

Another useful tool available to professors is ANGEL. ANGEL is an online course management system offering a variety of features including:

- Syllabus posting
 - Lessons (post course materials)
 - Communication Tools (Discussion boards, Chat)
 - Calendar
 - Quizzes, Surveys
 - Grading and Assessment Tools
 - Student Drop Box
 - Course Email
- and more...

With an ANGEL website, professors can post links to newspaper articles, online versions of magazines, and other online readings. Directing students to an online source instead of reprinting copyrighted material in a course-pack is a good way to cut back on the copyright fees. Please note that even though linking to copyrighted material is considered fair use, posting copyrighted material on a web site is not fair use, and will require permission from the copyright holder. (For more information on copyright law and online transmission please consult the SU Copyright Policy discussion of the TEACH Act: <http://www.seattleu.edu/policies> and <http://www.lib.ncsu.edu/scc/legislative/teachkit/overview.html>)

Reprographic will also be happy to assist you in obtaining permission to

post copyrighted material on your course web site. (For more information on ANGEL go to: <https://angel.seattleu.edu> or <http://www.seattleu.edu/it/idc>)

Contact Information

For questions about copyright clearance please contact:

Luke Ware
Copyright Policy Coordinator
warel@seattleu.edu
x2308

Susan Oistad
Manager
Reprographic Services
szoistad@seattleu.edu
x2658

For questions about course-pack production please contact:

Reprographic Services
x6180

For questions about ANGEL please contact:

Elizabeth Oder
Instructional Designer
idc@seattleu.edu
x 5594

For questions about the Lemieux Library and available online databases please contact:

Jan Hartley
Head of Technical Services
& Assistant Librarian
Technical Services, Lemieux Library
x6206

Fair Use: Overview and Meaning for Higher Education*

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Copyright law begins with the premise that the copyright owner has exclusive rights to many uses of a protected work, notably rights to reproduce, distribute, make derivative works, and publicly display or perform the work. But the Copyright Act also sets forth several important exceptions to those rights. Individual statutes make specific allowance for such concerns as distance learning, backup copies of software, and some reproductions made by libraries. The best known and most important exception to the owners' rights is fair use. The entire fair-use statute, as enacted by Congress, is as follows:

The Fair-Use Statute Section 107 of the Copyright Act of 1976.

Limitations on exclusive rights: Fair use

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified in that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

- *The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;*
- *The nature of the copyrighted work;*
- *The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and*
- *The effect of the use upon the potential market for or value of the copyrighted work.*

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

The Meaning of the Four Factors

While fair use is intended to apply to teaching, research, and other such activities, a crucial point is that an educational purpose alone does not make a use

fair. The purpose of the use is in fact only one of four factors that users must analyze in order to conclude whether or not an activity is lawful.

Moreover, each of the factors is subject to interpretation as courts struggle to make sense of the law. Some interpretations, and their subsequent reconstruction by policy-makers and interest groups, have been especially problematic. For example, some copyright analysts have concluded that if a work is a commercial product, the "nature" factor weighs against fair use. By that measure, no clip from a feature film or copy from a trade book could survive at least that fair-use factor. Similarly, some commentators argue that if a license for the intended use is available from the copyright owner, the action will directly conflict with the market for licensing the original. Thus, the availability of a license will itself tip the "effect" factor against fair use. Neither of these simplistic constructions of fair use is a valid generalization, yet they are rooted in some truths under limited circumstances. Only one conclusion about the four factors is reliable: Each must be evaluated in light of the specific facts presented.

A central tenet of this analysis is that fair use is a flexible doctrine that Congress wanted us to test and adapt for changing needs and circumstances. The law provides no clear and direct answers about the scope of fair use and its meaning in specific situations. Instead, we are compelled to return to the four factors and to reach creative and responsible conclusions about the lawfulness of our activities. Reasonable people will always differ widely on the applicability of fair use, but any reliable evaluation of fair use must depend upon a reasoned analysis of the four factors of fair use. The four factors also need not lean in one direction. If most factors lean in favor of fair use, the activity is allowed; if most lean the opposite direction, the action will not fit the fair-use exception and may require permission from the copyright owner. The following is a brief explanation of the four factors from the fair-use statute. Keep in mind that fair use requires weighing and balancing all four factors before reaching a conclusion.

I. Purpose

Congress favored nonprofit educational uses over commercial uses. Copies used in education, but made or sold at a monetary profit, may not be favored. Courts also favor uses that are "transformative," or that are not mere reproductions. Fair use is more likely when the copyrighted work is "transformed" into something new or of new utility, such as quotations incorporated into a paper, and perhaps pieces of a work mixed into a multimedia product for your own teaching needs or included in commentary or criticism of the original. For teaching purposes, however, multiple copies of some works are specifically allowed, even if not "transformative." The Supreme Court underscored that conclusion by focusing on these key words in the statute: "including multiple copies for classroom use."

II. Nature

This factor examines characteristics of the work being used. It does not refer to attributes of the work that one creates by exercising fair use. Many characteristics of a work can affect the application of fair use. For example, several recent court decisions have concluded that the unpublished "nature" of historical correspondence can weigh against fair use. The courts reasoned that copyright owners should have the right to determine the circumstances of "first publication." The authorities are split, however, on whether a published work that is currently out-of-print should receive special treatment. Fair use of a commercial work meant for the educational market is generally disfavored. Courts more readily favor the fair use of nonfiction, rather than fiction. Commercial audiovisual works generally receive less fair use than do printed works. A consumable workbook will most certainly be subject to less fair use than would a printed social science text.

III. Amount

Amount is measured both quantitatively and qualitatively. No exact measures of allowable quantity exist in the law. Quantity must be evaluated relative to the length of the entire original and in light of the amount needed to serve a proper objective. One court has ruled that a journal article alone is an entire work; any copying of an entire work usually weighs heavily against fair use. Pictures generate serious controversies, because a user nearly always wants the full image, or the full "amount." On the other hand, a "thumbnail," low-resolution version of the image might be an acceptable "amount" to serve an education or research purpose. Motion pictures are also problematic, because even short clips may borrow the most extraordinary or creative elements. One may also reproduce only a small portion of any work, but still take "the heart of the work." This concept is a qualitative measure that may weigh against fair use.

IV. Effect

Effect on the market is perhaps even more complicated than the other three factors. Some courts also have called it the most important factor, although such rhetoric is often difficult to validate. This factor means fundamentally that if you make a use for which a purchase of an original theoretically should have occurred—regardless of your personal willingness or ability to pay for such purchase—then this factor may weigh against fair use. "Effect" is closely linked to "purpose." If your purpose is research or scholarship, market effect may be difficult to prove. If your purpose is commercial, then adverse market effect is often presumed. Occasional quotations or photocopies may have no adverse market effects, but reproductions of software and videotapes can make direct inroads on the potential markets for those works.

Disclaimer: This booklet contains general information and is not intended to substitute for specific legal advice. For questions, please contact the University Counsel's Office at 206-296-2043 or email policies@seattleu.edu.

