

USE OF COPYRIGHTED WORKS POLICY

Approved by Administrative Council 6/25/18

Effective date 7/1/18

I. Objective of the Policy

Roseman University of Health Sciences is committed to respecting the rights that exist in any work protected by the copyright laws of the United States. While Roseman University faculty, staff, and students are encouraged to take advantage of relevant licenses, exemptions, and exclusions, including fair use, to make appropriate use of copyrighted works for teaching or other university-related purposes, they are still expected to comply with all U.S. copyright laws.

For an overview of relevant U.S. copyright law, see Appendix 1, Guidelines on Copyrighted Material. As copyright law can be complex, these guidelines are not intended to provide legal advice. For policies concerning copyrightable works created by University employees, see the Roseman University of Health Sciences Policy on Patents and Other Intellectual Property.

II. Responsibility of Faculty, Staff and Students

It is the responsibility of Roseman faculty, staff and students to identify the ownership of copyrighted works and make a good faith determination of whether the intended use falls within fair use or other exemptions. Fair use is a defense against copyright infringement, not an exemption from copyright compliance. For assistance with determining the likelihood of fair use coverage for using a copyrighted work, see Appendix 2, Copyright Checklist for Fair Use or contact a librarian. All four factors for determining fair use must be considered, not just the purpose of educational use. For information on appropriate copying for classroom use, see Appendix 3, Guidelines for Classroom Copying.

When a copyright notice is not available on the work itself, additional assistance can be requested from the U.S. Copyright Office for registered works (www.copyright.gov) or the Copyright Clearance Center (www.copyright.com).

When fair use cannot be established, it is the responsibility of the faculty member, staff member, or student to seek permission for use from the copyright holder prior to use of the work. Citing a work is not a substitute for obtaining permission. For suggestions on what to include in the request, see Appendix 4, Model Request for Permission to Use Copyrighted Material. Alternately, a free copyright license may be available through Creative Commons (creativecommons.org) or permission may be applied for through the Copyright Clearance Center (www.copyright.com). Section 504 of the U.S. copyright law (U.S. Code Title 17) states that users are liable for any actual or statutory damages for copyright infringement.

It is the responsibility of the faculty or staff member, or his or her program or unit, to pay for permission fees when they are required. Students may contact their program to request assistance with permission fees.

It is the responsibility of students to not only properly cite copyrighted works, but also to ensure that the use of the work does not violate copyright law. When in doubt, contact a librarian.

It is the responsibility of the faculty member to properly attribute ownership of copyrighted materials in course content and to include a statement visible to students indicating that the material cited is subject to the copyright law of the United States (e.g., on the syllabus or webpage where materials are linked or on the final slide of a presentation).

It is the responsibility of faculty and staff involved in online courses to abide by the provisions of the TEACH Act in addition to the above stated U.S. copyright law and fair use exemptions. These include provisions that govern the amount and intent of the use, as well as requirements to restrict access to enrolled students and reasonably prevent further dissemination of the work. Faculty and staff supporting online courses are also responsible for promoting copyright compliance and notifying students that materials in the course may be subject to copyright protection. For an overview of the TEACH Act, see the section on the TEACH Act in Appendix 1, Guidelines on Copyrighted Material.

It is the responsibility of library staff to provide informational materials to students and employees that describe and promote copyright compliance, and to abide by the Conference on Fair Use (CONFU) Guidelines and similar accepted library practices regarding interlibrary loans, electronic reserves and copying.

III. Responsibility of Roseman University

Roseman University will not assume legal responsibility for faculty, staff or students who neglect to identify copyright ownership, do not make a good faith determination of fair use, or otherwise do not comply with this policy or with U.S. copyright law.

APPENDIX 1

GUIDELINES ON COPYRIGHTED MATERIAL

I. Copyright Overview

The U.S. Copyright Act (United States Code, Title 17) defines the rights of a copyright holder and how they may be enforced against an infringer. Copyright protection begins upon fixing “in any tangible medium of expression” any “original works of authorship.” Registration of copyright with the U.S. Copyright Office is not needed in order to receive the protection, although non-registered works are not eligible for statutory damages in the case of infringement.

The general time limit for copyright protection currently is the author’s lifetime plus seventy years, although works for hire have protection for the lesser of 120 years from creation or 95 years from publication. Previously authors of works created before 1978 were required to file to renew copyright (for which the limit was 28 years with renewals for up to 95 years), but that was dropped in 1989, along with the requirement for works to bear a formal copyright notice, when the United States joined the multinational Berne Convention. The Copyright Act protections now also extend to most foreign publications once they enter U.S. jurisdiction. Works for which copyright protection has expired are considered part of the public domain.

Copyrights can be bought, sold, or given away. Transfer of copyright to publishers is common in academia; transfer must be documented in writing and signed by the author. Authors may alternately choose to make their work available in an Open Access publication or under a Creative Commons (CC) license. A work marked with a CC license may be used for any noncommercial purpose as long as the author or source is attributed.

Covered works may include printed or hand-written materials (both published and unpublished), photographs, illustrations, charts, paintings, sculptures and other works of art, computer programs, videos and motion pictures, sound recordings and musical works, and multiple varieties of digital media. Works produced by the U.S. Federal Government are not copyrightable (Section 105). Other works outside copyright include facts, titles, names and slogans (unless trademarked), ideas (unless patented), and works not in a fixed medium. Omission of a copyright notice on a work does not identify whether it is or is not protected.

The Copyright Act gives the following rights to copyright owners (Section 106):

1. to reproduce the copyrighted work;

2. to prepare derivative works based on the copyrighted work;
3. to distribute copies or recordings of the copyrighted work;
4. to perform the copyrighted work publically;
5. to display the copyrighted work publically; and
6. to perform the copyrighted work publically by means of digital transmission.

Violation of copyright law happens when use of the work infringes on the rights of the owner. Full attribution should be provided for each work every time it is used; however, citing a resource is not a substitution for permission. Reproduction of a work may include photocopying, scanning, recording, or even downloading from the Internet. Distribution of a work may include handing out photocopies, posting a picture or document on the web that someone can download (versus just providing a link to the original), or attaching a document to email. The Digital Millennium Copyright Act (DCMA) of 1998 added a prohibition against circumventing technological protection systems put in place by the copyright holder or removing copyright management information such as copyright notice or conditions for use from a work.

Possible consequences of copyright infringement include an injunction to bar any further unlawful use of the copyrighted work, impounding of copies and equipment, reimbursement to the copyright holder for any losses incurred by them or profits gained by the infringer, statutory damages up to \$30,000 per work (up to \$150,000 if determined the infringement was willful), and reimbursement to the copyright holder of attorney and legal fees. Liability begins with the person who committed the infringement, but in court cases the institution or organization is generally held liable either due to contributory infringement (they provided the means or equipment for the infringement and knew or should have known about it) or vicarious liability (they had the right to supervise the activity whether they did or didn't supervise it and benefited from the infringement even if they didn't know).

The Copyright Act includes certain exceptions to the exclusive rights of copyright holders. Exceptions of specific interest to libraries and non-profit educational institutions include allowance for anyone who has purchased a lawfully made copy of a work to loan or resell it to others (the "First Sale" doctrine, Section 109a), allowance for display and performance of works in a classroom setting (Section 110.1), and allowance for display and performance in distance learning (Section 110.2) under certain restrictions and conditions. Section 108 allows libraries to copy materials for preservation purposes and provide materials for interlibrary loan, as well as protecting libraries from infringement by others using unsupervised copy machines. Of particular importance is the "Fair Use" doctrine in Section 107 which allows for reproduction of copyrighted materials without the copyright holder's express consent under certain conditions for purposes of criticism, comment, news reporting, teaching, scholarship, or research.

II. Fair Use

As written in Section 107 of the Copyright Act, the conditions under which fair use applies are fairly broad and flexible. The statute lists the following four factors to consider in determining whether or not use of a copyrighted work is fair use:

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

The four factors are intended to be considered together rather than singly, although not all need to be satisfied for the use to be considered fair. Application of the factors is also situational; determination of fair use is dependent on the facts for each individual instance of use.

A. Purpose

Working for a non-profit educational institution does not automatically permit fair use of copyrighted works. The use by an instructor should be directly related to a particular course and needed for a specific reason. Access should be restricted such as by only handing out photocopies to registered students in the class or password-protecting access to the work on a network, and permission should be sought for extended use. Students should be provided information about their rights and responsibilities regarding their use of course materials.

The courts also favor uses that are “transformative” in nature when the use alters the work to create something new (such as a parody, quotations incorporated into a research paper, or creation of a multimedia project).

The statute specifically permits multiple copies for classroom use, subject to the other four factors (see also “Guidelines for Classroom Copying” included in these appendices). If the pages copied do not include the original copyright notice on the first page, a statement indicating that the material is subject to the copyright law of the United States should be added along with the attribution of ownership. Repeatedly making large numbers of copies, especially of the same work, over a long period of time can still become problematic.

B. Nature

The nature of the work involved determines the level of constraint. Fair use is most generous concerning factual information and most restrictive concerning creative works. Courts have recognized that the creation of new knowledge depends on the ability to build on earlier work, including articles, books, and other works of nonfiction. Copyright law, however, specifically attempts to protect and reward creative work, so use of photography, illustrations, music, and motion pictures is more limited. For use of video clips it makes a difference whether the original is a feature film, a news broadcast, or an educational video produced specifically for the academic market. In these cases particularly, providing a link to the original work on a website is safer than posting the work.

Workbooks and other consumable materials are considered completely outside of fair use as the publishers specifically market them to be used up and repurchased, so copying them undermines the copyright holder's right of reproduction and distribution. It is important to keep in mind that digital content such as found on the Internet has the same copyright protections as non-digital content.

C. Amount

How much of the original copyrighted work is being used is a crucial factor for consideration of fair use, although the statute itself gives no guidelines for determining what amount is fair. Amount refers both to quantity (such as percentage of the total) and quality (whether it includes the "heart of the work"). Court cases indicate that different types of works may be measured differently, for example an article has been ruled as an independent work but a book chapter is not. Reuse of entire photos and other visual works have mostly been excluded from fair use, but "thumbnail" size reproductions have been allowed. Overall, shorter excerpts are more likely to be considered fair use than longer ones.

In the 1990's the Conference on Fair Use (CONFU) attempted to draft guidelines for the use of certain works (particularly non-print) for specific purposes such as multimedia presentations and electronic reserves, but the only outcome to be endorsed by the participants was a "Statement on Use of Copyrighted Computer Programs (Software) in Libraries" (1996). Rather than prescribed limits, the document presented a set of scenarios with an analysis of whether or not each constituted fair use.

In addition to the amount of the work used, court cases have also looked at the quality of the portion used. They have reasoned that while the amount might be small (even down to a single quotation from a book), if that small amount constitutes the most important or desirable part of the entire work, its use might not be considered fair. The strongest case can be made by clearly tying the amount of the work used to the educational purpose and demonstrating the importance of its incorporation.

D. Effect

Some courts have considered the effect of the use on the potential market or value of the copyrighted work to be the most important factor. The issue is not just potential loss of sales, but also of payment received for licensing rights, including the system of permissions

and fee collection that may be put in place by a publisher. This latter factor may be applicable for works that are out of print. The concept of loss of sale is particularly important in academia for works that have been created expressly for the educational market (such as textbooks). In addition to any impact related to the current work, courts also look at the potential impact on an author or other copyright holder to make future derivative works. This is partially why for educational use it is important to restrict access to current members of the class and to remove access once the class ends.

The more the use alters the context of the work through adding commentary or criticism, the less likely that the courts will view it as having a negative impact on the market. For example, including charts and images from other sources in original instructional materials is likely to be fair use because you are changing the context enough to not interfere with a realistic market for the original work (although you still need to consider the amount you are using from any single source). However, since markets can change, use needs to be periodically reevaluated to determine if there are any potential effects and if they are significant.

Fair use is a defense against copyright infringement, not an exemption from copyright compliance. It is always best to first check for reasonable availability of permission from the copyright holder. It is also important to check the terms of any existing licensing agreements as contract law trumps fair use. Even on a secure network it is better to link to the original work when possible, including to content in a database licensed through the library, rather than posting the work on a website. The availability of guidelines, when they exist, does not replace careful application of the four factors. Retaining a record of your fair use analysis can serve as documentation against future concerns. Educators and librarians are expected to demonstrate good faith efforts by knowing the law and working with the four factors in the statute.

III. The TEACH Act

Another law applicable to educational institutions is the Technology, Education and Copyright Harmonization Act (TEACH Act) of 2002 (Public Law 107-273, Subtitle C, SEC. 13301). This statute adds exemptions for performances and displays used for educational uses by accredited non-profit institutions. The intention of the act is to enable online courses (“mediated instructional activities transmitted via digital networks”) to mirror the classroom experience. The TEACH Act does not supersede fair use or existing license agreements. The work used must be an amount comparable to that typically displayed in a live classroom setting, be used at the direction or under the supervision of an instructor as an integral part of a class session, be directly related and of material assistance to the teaching content, and be limited in transmission reception to students enrolled in the course and related employees. In addition, the institution determining to take advantage of the allowances in the TEACH Act must first take several steps: institute copyright policies, provide informational materials to students and employees that describe and promote copyright compliance, notify students that materials in the course may be subject to copyright protection, and apply technological measures that “reasonably” prevent retention of the work longer than the class session or unauthorized further dissemination of the work.

The works used cannot include any materials such as textbooks/course packs or media which are typically purchased or acquired by students for their independent use.

IV. Obtaining Permission

If your intended use of a copyrighted work does not fall within fair use or any of the other copyright exceptions, and is not in the public domain or contain a Creative Commons license or other statement of permission, you must obtain permission from the copyright holder. Citing a work is not a substitute for obtaining permission. Remain flexible on your selection and intended use in case permission is not granted. You may be able to negotiate with the copyright holder regarding the type or amount of use, or you may have to substitute an alternative work. In case the copyright owner charges for permission, have in mind how much you are willing to pay (and the source of those funds) based on the importance of the work for your intended purpose.

To identify the copyright holder, look for a copyright notice on the work itself. Usually the copyright holder will be the publisher, author or institution or organization to which the author is affiliated. If there is no clear copyright notice, you can check with the U.S. Copyright Office for registered works (www.copyright.gov) or with the Copyright Clearance Center (www.copyright.com). Keep in mind that ownership of copyright may have changed hands since original publication.

In drafting a letter of request for permission, communicating complete and accurate information to the copyright holder may facilitate the request. Make sure to include the exact work and how much of it you plan to use, why you want to use it and for how long, and how you intend using the work (handouts, within a lecture slide, etc.). Provision of a self-addressed return envelope will assist in obtaining a reply. A model letter is included in these appendices.

V. References

Association of Research Libraries. (2012). *Code of best practices in fair use for academic and research libraries*. Washington, D.C: Association of Research Libraries.

Copyright Clearance Center. (2005). *The TEACH act: new roles, rules and responsibilities for academic institutions*. Danvers, MA: Copyright Clearance Center.

Crews, K. D. (2012). *Copyright law for librarians and educators: creative strategies & practical solutions* (3rd edition). Chicago: American Library Association.

Lehman, B.A. (1998). *The conference on fair use: final report to the commissioner on the conclusion of the conference on fair use*. Washington, D.C.: U.S. Government Printing Office.

Technology, education, and copyright harmonization act of 2002, Pub. L. No. 107-273, § 13301, C. (2002). Washington, D.C.: U.S. Government Printing Office.

U.S. Copyright Office. (1998). *Summary: the digital millennium copyright act of 1998*. Washington, D.C.: Government Printing Office.

U.S. Copyright Office. (2009). *Reproduction of copyrighted works by educators and librarians* (circular 21). Washington, D.C.: U.S. Government Printing Office.

APPENDIX 2
COPYRIGHT CHECKLIST FOR FAIR USE

Factor 1:
Purpose

Favoring Fair Use

Teaching (including classroom copies)
Research
Scholarship
Nonprofit educational institution
Criticism, comment or parody
News reporting
Transformative or productive use
(changes the work for new utility)
Restricted access (to students or other
appropriate group)

Opposing Fair Use

Commercial Activity
Profiting from the use
Entertainment
Bad-faith behavior
Denying credit to original author

Factor 2:
Nature

Favoring Fair Use

Published work
Factual or nonfiction based
Important to favored educational
objectives

Opposing Fair Use

Unpublished work
Fiction
Highly creative (art, music, novels,
films, plays)

Factor 3:
Amount

Favoring Fair Use

Small quantity
Portion used is not central or significant
to entire work
Amount is appropriate for a favored
educational purpose

Opposing Fair Use

Large portion or whole work used
Portion used is central to work or to
"heart of the work"

***Factor 4:
Effect***

Favoring Fair Use

User owns lawfully acquired or purchased copy of original work
One or few copies made
No significant effect on the market or potential market for copyrighted work
No similar product marketed by the copyright holder

Lack of licensing mechanism

Opposing Fair Use

Could replace sale of copyrighted work
Numerous copies made
Significantly impacts potential market for work or derivative
Affordable permission available for using work
Reasonably available licensing mechanism
Was made accessible on Web or in other public forum
Repeated or long term use

Adapted from: Crews, Kenneth D., Copyright Law for Librarians and Educators: Creative Strategies & Practical Solutions, 3rd edition, Chicago: American Library Association, 2012.

APPENDIX 3

GUIDELINES FOR CLASSROOM COPYING

This document, adapted from “Guidelines for Classroom Copying in Not-for-Profit Educational Institutions,” (1976) is provided for informational purposes. The stated purpose of the guidelines are to indicate minimum standards for educational use under fair use and not to limit the types of copying permitted. The use of this guideline does not replace application of the four factors of fair use stated in Section 107 of the U.S. Copyright Act (United States Code Title 17).

I. Single Copying for Teachers

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

- A. A chapter from a book;
- B. An article from a periodical or newspaper
- C. A short story, short essay or short poem, whether or not from a collective work;
- D. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.

II. Multiple Copies for Classroom Use

Multiple copies (not to exceed, in any event, more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion, provided that:

- A. The copying meets the tests of brevity and spontaneity as defined below; and,
- B. Meets the cumulative effect as defined below; and,
- C. Each copy includes a notice of copyright.

Definitions

Brevity

- i. Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages; or, (b) from a longer poem, an excerpt of not more than 250 words.
- ii. Prose: Either a complete article, story, or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event, a minimum of 500 words.

- iii. Illustration: One chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue.
- iv. "Special" works: Certain works in poetry, prose, or in "poetic prose" which often combine language with illustrations and which are intended sometimes for children and, at other times, for a more general audience fall short of 2,500 words in their entirety. Notwithstanding Item #2, such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special works and containing not more than 10% of the words found in the text thereof, may be reproduced.

Spontaneity

- i. The copying is at the instance and inspiration of the individual teacher, and;
- ii. The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative Effect

- i. The copying of the material is for only one course in the school in which copies are made.
- ii. Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, not more than three from the same collective work or periodical volume during one class term.
- iii. There shall not be more than nine instances of such multiple copying for one course during one class term.

III. Prohibitions as to I and II Above

Notwithstanding any of the above, the following shall be prohibited:

- A. Copying shall not be used to create or to replace or substitute for anthologies, compilations, or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately.
- B. There shall be no copying of or from works intended to be "consumable" in the course of study or of teaching. These include workbooks, exercises, standardized test, and test booklets and answer sheets and like consumable material.

- C. Copying shall not:
- a. substitute for the purchase of books, publishers' reprints or periodicals;
 - b. be directed by higher authority;
 - c. be repeated with respect to the same item by the same teacher from term to term.
- D. No charge shall be made to the student beyond the actual cost of the photocopying.

Adapted from "Guidelines for Classroom Copying in Not-for-Profit Educational Institutions" with respect to books and periodicals, Ad Hoc Committee on Copyright Law Revision: by Sheldon Elliott Steinbach (1976).

APPENDIX 4

MODEL REQUEST FOR PERMISSION TO USE COPYRIGHTED MATERIAL

Dear Sir or Madam:

I would greatly appreciate your permission for the following educational use:

Title:

Copyright:

Author:

Amount of Work: [i.e., pages 196-198, Tables 1-4, illustration on page 43, Chapter 7, etc.]

Proposed Use: [i.e., copy and distribute to X# students at no cost, post on secured website for student access, incorporate into PowerPoint slide for lecture, etc.]

Purpose: [i.e., enhance lecture, show example of clinical study, etc.]

Timeframe: [i.e., single/multiple classes for current academic year, up to two years, etc.]

This request is for nonexclusive, irrevocable and royalty free permission for non-profit educational purposes not intended to interfere with other uses of the same work by you.

If you do not currently hold the legal right to grant this permission, please direct me to the current rights holder. Otherwise, your permission confirms that you hold the right to grant the permission requested here.

A duplicate copy of this request has been provided for your records. If you agree to grant the permission requested, please sign below and return one copy in the provided self-addressed stamped envelope.

Sincerely,

Permission is hereby granted for use of the materials as described:

Signature: _____

Name & Title: _____

Organization/Affiliation: _____

Date: _____