



Intellectual Property and Fair Use Guidelines

Richardson Library, Hardin-Simmons University

Hardin-Simmons University Copyright Policy

It is the policy of Hardin-Simmons University that faculty, staff, administrators, and students shall strive to obey Intellectual Property laws and licenses. The University is aware that the rights extended to our community by Fair Use are not delineated in Copyright Law. The Richardson Library's brochure "Intellectual Property and Fair Use Guidelines" provides guidelines that may be used to assist in staying within the boundaries of fair use.

Since individuals are at risk if they violate the Copyright Law and licenses, each community member is responsible for evaluating his own risk. The act allows a judge to award statutory damages for copyright infringement of \$750 - \$30,000 per incident, \$150,000 for willful violations.

Ownership of Copyrights

Except as qualified below, a member of the university is entitled to ownership of copyright and royalties or other income derived from their works, including books, films, cassettes, software, works of art, or other materials.

Copyright shall be owned by the university, unless other arrangements are contracted, if production of the work:

- a. Used substantial university financial, staff, or other assistance
- b. Made extensive use of special or rare university holdings, such as rare book collections
- c. Made significant use of voice or image of students or staff in a product,
- d. Used substantial creative contribution by staff or students to the preparation of the product
- e. Used the name or insignia of the university or any of its units (other than for purposes of identification of individual faculty members) to identify or to promote the distribution of a product, or other identification or promotion that implies the approval or endorsement by the university or one of its units.

Whenever a copyrightable work is created by a member of the non-teaching staff as part of the individual's university responsibilities, the work shall be treated as a work-for-hire under the terms of the Copyright Act of 1976.

Student will own the copyrights to their theses, however, a student must, as a condition to a degree award, grant royalty-free permission to the university to reproduce and publicly distribute copies of his/her theses.

Fair Use Guidelines

There are four factors that determine Fair Use; (1) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit 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. This document was drafted with the assumption that the nature of usage is for supporting university curriculum. The guidelines below are designed to help identify the remaining requirements. Those wishing to use copyrighted materials for uses other than for supporting university curriculum should identify the applicable restrictions and abide by them.

Fair Use Guidelines for Printed Materials

Limit to:

For Teachers Individual Use:

- Single chapters
- Single articles from a journal issue or newspaper

For Multiple Copies for Classroom Use:

- A short story, short essay or short poem whether of not from a collective work
Poetry: A complete poem if less than 250 words or, from a longer poem, an excerpt of not more than 250 words.
Prose: (a) Either a complete article, story or essay of less than 2,500 words or
(b) an excerpt of not more than 1,000 words or 10% of any prose work, whichever is less, but in any event a minimum of 500 words.
- One chart, graph, cartoon, or other illustration from a book, periodical, or newspaper (in some cases such illustrations are copyrighted individually and can not be used under fair use).

Caution:

- Do not copy from works intended as consumables. These include workbooks, exercises, standardized tests and test booklets, and answer sheets.
- Copying is not to substitute for the purchase of books or originals.
- Copying may not be directed by a higher authority than the individual teacher.
- No charge may be made to the student beyond the actual cost of photocopying.
- Be sure useage meets the definition of spontaneity:
 - (a) The copying is at the instance and inspiration of the individual teacher, and
 - (b) 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.

Be sure to include:

- Any copyright notice from the original
- Appropriate citations and attributions to the source

OBTAIN PERMISSION for materials that will be used repeatedly by the same instructor for the same class especially from semester to semester.

Fair Use Guidelines for Using audio/visual materials:

Use:

- Sparingly
- Only if faculty member or institution possesses a legal copy of the work
- Only in a classroom, with the faculty member present, and as part of the curriculum
- Only if access limited to students enrolled in the class

Be sure to include:

- Any copyright notice on the original
- Appropriate citations and attributions to the source

OBTAIN PERMISSION for materials that will be used repeatedly by the same instructor for the same class especially from semester to semester.

Fair Use Guidelines for Using Broadcasted Television Programs:

There are a number of restrictions placed on the use of video recordings made from broadcasted television programs.

- (a) A broadcast program may be recorded off-air simultaneously with broadcast transmission and retained for a period not to exceed the first 45 consecutive calendar days after date of recording. Upon conclusion of such retention period, all off-air recordings must be erased or destroyed immediately. “Broadcast programs” are television programs transmitted by television stations for reception by the general public without charge.
- (b) Off-air recordings may be used once by individual teachers in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary, in classrooms and similar places devoted to instruction within a single building, cluster, or campus, as well as in the homes of students receiving formalized home instruction, during the first 10 consecutive school days in the 45 day calendar day retention period. “School days” are school session days—not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions—within the 45 calendar day retention period.
- (c) Off-air recordings may be made only at the request of, and used by, individual teachers, and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.
- (d) A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording.
- (e) After the first 10 consecutive school days, off-air recording may be used up to the end of the 45 calendar day retention period only for teacher evaluation purposes, i.e., to determine whether or not to include the broadcast program in the teaching curriculum, and may not be used in the recording institution for student exhibition or any other non-evaluation purpose without authorization.
- (f) Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.
- (g) All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.

Fair Use Guidelines for Digitizing and using other's work on Black Board

Limit materials to:

- Single articles or chapters
- Several charts, graphs or illustrations or other small parts of work
- Small part of materials required for the course
- Copies of material that a faculty member or the library already possesses legally
- Students enrolled in the class and administrative staff if needed

Be sure to include:

- Any copyright notice on the original
- Appropriate citations and attributions to the source

OBTAIN PERMISSION for materials that will be used repeatedly by the same instructor for the same class especially from semester to semester.

Obtaining Permission

When the copyright owner is the publisher of the work, the request should be sent to the permissions department of the publisher in question. If the address of the publisher does not appear at the front of the material, it may be obtained from *The Literary Marketplace* (for books) or *Ulrich's International Periodicals* (for journals), both published by the R.R. Bowker Company. When the copyright owner is the author, the request should be directed to the author either in care of the publisher's permissions department, or at the author's address. For purposes of proof, and to define the scope of the permission, it is important that the permission be in writing.

Many publishers have registered with the Copyright Clearance Center, 21 Congress Street, Salem, MA 01970. This organization can facilitate obtaining permission to copy.

An excellent source for more information is: <http://www.utsystem.edu/ogc/intellectualproperty/permisn.htm>

Electronic Data Bases

Our subscription electronic databases are licensed to Hardin-Simmons for our use. Intellectual property licenses take priority over the Copyright Law! Before you copy or distribute material from electronic databases be sure you understand the license agreements between Hardin-Simmons and the electronic database publisher. If you need help, contact a university librarian.

WHEN U.S. WORKS PASS INTO THE PUBLIC DOMAIN

A public domain work is a creative work that is not protected by copyright and which may be freely used by everyone. The reasons that the work is not protected include: (1) the term of copyright for the work has expired; (2) the author failed to satisfy statutory formalities to perfect the copyright or (3) the work is a work of the U.S. Government.

DATE OF WORK	PROTECTED FROM	TERM
Created 1-1-78 or after	When work is fixed in tangible medium of expression	Life + 70 years ¹ (or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation ²)
Published before 1923	In public domain	None
Published from 1923 - 63	When published with notice ³	28 years + could be renewed for 47 years, now extended by 20 years for a total renewal of 67 years. If not so renewed, now in public domain
Published from 1964 - 77	When published with notice	28 years for first term; now automatic extension of 67 years for second term
Created before 1-1-78 but not published	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2002, whichever is greater
Created before 1-1-78 but published between then and 12-31-2002	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2047 whichever is greater

1. Term of joint works is measured by life of the longest-lived author.

2 Works for hire, anonymous and pseudonymous works also have this term. 17 U.S.C. § 302(c).

3 Under the 1909 Act, works published without notice went into the public domain upon publication. Works published without notice between 1-1-78 and 3-1-89, effective date of the Berne Convention Implementation Act, retained copyright only if efforts to correct the accidental omission of notice was made within five years, such as by placing notice on unsold copies. 17 U.S.C. § 405.

Courtesy of: Lolly Gasaway, University of North Carolina, <http://www.unc.edu/~unclng/public-d.htm>

For more complete information on fair use guidelines see:

<http://www.copyright.gov/circs/circ21.pdf>