COPYRIGHT COMPLIANCE AND POLICY
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COPYRIGHT COMPLIANCE FOR KUYPER COLLEGE

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Introduction

The purpose of this guide is to provide faculty, staff, and students at Kuyper College with a basic understanding of copyright law and fair use, as well as a number of valuable links to websites that provide more in-depth instructional materials for applying the law to specific situations.

“You are one person, holding your job and executing your duties, on the staff of a library, college, or university. Is copyright your responsibility? Are you the right person to make the decision about fair use? One way to think about those questions stems from one basic legal principle about copyright: the person who makes the copies or other uses of a work is the first person responsible for any infringement that might result. In other words, if you are the one who operates the computer and does the clipping and uploading, you have the immediate responsibility and liability. That would tend to place the decision squarely in your hands. However, if you are taking action as part of your duties as a teacher, librarian, or other members of the institution, then in almost any typical situation, the liability will be shared upstream with the organization.”

(Crews, p. 7)

This paragraph from Copyright Law for Librarians and Educators: Creative Strategies & Practical Solutions (2012) points out the importance of becoming familiar with the basics of the Copyright Law, Title 17 of the U.S. Code. (http://www.copyright.gov/title17) The law seeks to provide a balance between the exclusive rights of the copyright holder and the exceptions to use these protected works in an educational context.

While copyright issues can be complex, everyone needs to understand the basics. Failure to comply with copyright law can lead to substantial legal penalties for both you and the college.

This guide also includes copyright and fair use compliance guidelines for faculty.

Disclaimer

All information provided by this guide represents a good faith effort to accurately interpret and apply the law and other guidelines pertaining to copyright. This material does not constitute legal advice and should not be regarded as such.

Please contact Kyle Wigboldy, Registrar, with questions or concerns regarding this copyright guide.

Copyright Law Defined

Copyright law, as defined in Title 17 of the United States Code, http://www.copyright.gov/title17/) protects "original works of authorship fixed in a tangible medium of expression" for a limited period. Copyright protection includes, for instance, the legal right to publish and sell literary, artistic, or musical work, and copyright protects authors, publishers and producers, and the public. Copyright applies both to traditional media (books, records, etc.) and to digital media (electronic journals, web sites, etc.).

~ 3 ~
Copyright protects the following eight categories of works:

1. literary works
2. musical works
3. dramatic works
4. pantomimes and choreographic works
5. pictorial, graphic, and sculptural works
6. motion pictures and other audiovisual works
7. sound recordings
8. architectural works

Copyright protection does not extend to any idea, procedure, process, system, title, principle, or discovery. Ownership of a copyrighted work includes the right to control the use of that work. Use of such work by others during the term of the copyright requires either permission from the author or reliance on the doctrine of fair use. (http://libguides.pointloma.edu/content.php?pid=203591&sid=1700399) Failure to do one or the other will expose the user to a claim of copyright infringement for which the law provides remedies including payment of money damages to the copyright owner.

Purpose of Copyright

The purpose of copyright is

1. “…to promote the Progress of Science and Useful Arts, by securing for limited Times to Authors and Inventors exclusive Right to their respective Writings and Discoveries.” (U.S. Constitution, Article 1, section 8, clause 8).
2. To encourage the creation of art and culture by guaranteeing authors and artists a set of exclusive rights.
3. To encourage citizens to be creative and to share their works (Ferullo, p. 12).
4. To balance the rights of the copyright holder with the rights of the public to use the work (Ferullo, p. 1).

Laws, Regulations & Guidelines

1. The U.S. Copyright Act of 1976 (http://www.copyright.gov/title17/)
   
   Section 106: Exclusive Rights in Copyrighted Works
   
   Section 107: Limitations on Exclusive Rights (Fair Use)
   
   Section 108: Limitation on Exclusive Rights (Reproduction by Libraries & Archives)
   
   Section 109: Limitations on Exclusive Rights (Effect of Transfer of Particular Copy or Phonorecord)
   
   Section 110: Limitations on Exclusive Rights (Exemption of Certain Performances and Displays)
   
   Section 110 (2) The TEACH Act (The Technology, Education, and Copyright Harmonization Act of 2002) (Use of Copyrighted Media in Distance Education) (Controls the digital transmission of works in online distance learning and through a CMS) (Includes 21 requirements for DE instructors, 11 requirements for administrators, and 9 requirements for technologists)
Q & A Regarding Copyright

In what type of situations should you be thinking about copyright protection, infringing activities and fair use of materials?

1. Uploading materials into Sakai or another LMS
2. Clipping and copying materials into various teaching tools
3. Posting materials for distance learning or a hybrid course
4. Developing databases of copyrighted works for research
5. Sharing articles and other materials with colleagues and students
6. Developing digital libraries
7. Placing copies on library reserves

How do you get something copyrighted?

A work is automatically protected if it is: an original work of authorship, and is fixed in a tangible form. It is not necessary to have a notice of copyright placed on the work or to register it with the U.S. Copyright Office, though there are benefits to registering the work.

How long does copyright protection last?

Currently, protection for works created on or after 1978 lasts for the life of the author (creator) plus seventy years. Protection for “works made for hire” lasts for the lesser of either 95 years from publication or 120 years from creation of the work. (See additional information in the question on public domain).

What are the rights of the copyright holder?

All copyright holders have five exclusive rights: reproduction, distribution, public performance, public display, the right to allow derivative works, and a sixth is moral rights for the visual arts.

Who owns the copyright?

The owner could be: the creator of the work, work-made-for-hire (i.e., a professor creating a course), rights can be shared by the creator and the institution the creator is working for, can be transferred from the creator to someone else (the “estate”), and students own their own works.
What is Fair Use?

Fair use is a concept embedded in U.S. law that recognizes that certain uses of copyright-protected works do not require permission from the copyright holder. It allows for the educational use of copyrighted material without having to request permission to use it. There are limitations, however, as to how the material can be used and these limitations are known as the “Four Factors of Fair Use.” Fair use requires a reasoned and balanced analysis of these four factors.

What Determines Fair Use?

The following four factors are used to determine if a use is fair:

1. The purpose and character of the use: whether it is of a commercial nature or for nonprofit educational use; also consider if the use is “transformative”
2. The nature of the copyrighted work: creative or more factual (The more creative a work is, the more it tends to be protected by the law and the courts).
3. The amount of the material used: substantiality of the portion used in relation to the whole work (Guidelines are provided for amounts, but no specific numbers, word counts, or pages are provided by the law. Court cases seem to focus on the concept of “the heart of the work” and what amount of the work is actually needed to accomplish the purpose of using a part of the work.” (3 considerations: Amount helped overmuch vs. appropriate in context? Amount stimulates interest vs. substitutes for original? Is it the “heart of the work?”)
4. The effect of use on the potential market for or value of the work: Important questions to consider: Would it be considered a substitute of the original work? Is this copy harming the market for the original work? Is excerpt licensing available?

The analysis of fair use must be done on a case-by-case basis. It is not a straight-forward concept providing specific guidelines for copyright exceptions. Fair use allows the use of copyright protected materials for commentary, parody, news reporting, research, and education. Just because something is used in an academic context, however, does not mean it automatically qualifies as fair use. For a more thorough analysis of the fair use factors, please use the Columbia University Fair Use Checklist.

Fair Use in Academia

The Fair Use Doctrine is probably the most important exemption to copyright protections for educational settings, allowing many uses of copyrighted works for the purposes of teaching and research. The complexity of fair use and its importance in academia make it imperative that every member of the Kuyper community understands how to make judgements concerning fair use.

Tools to Help Evaluate Fair Use

1. Fair Use Checklist
   The purpose of a fair use checklist is to serve as a type of road map to assist in navigating through an analysis of the four factors in determining fair use. It helps you to focus on the specific factual circumstances that are important in the evaluation of fair use. The checklist also provides a method of
documenting the decision-making process and is critical to establishing and recording your good-faith effort to comply with the copyright law.

Each of the four factors in determining fair use is given equal weight. When all four factors favor fair use, fair use is justified. When three factors favor fair use, it is more than likely fair use. When the outcome is a tie, then it may not be fair use and you need to assess the risk involved. The safe route would be to request permission to use the work. When there is only one factor that favors fair use, then it probably is not fair use and permission should be requested. The Purdue University Copyright Office (https://www.lib.purdue.edu/ucd/CopyrightBasics/fair_use.html) provides a simple overview of fair use considerations.

Links to two sample checklists:

Columbia University (https://copyright.columbia.edu/basics/fair-use/fair-use-checklist.html)

Georgia State University (http://www.usg.edu/assets/usg/docs/copyright_docs/fair_use_checklist.pdf).

2. **Fair Use Analysis Tool** (https://www.lib.umn.edu/copyright/fairthoughts)

Guides users through the process of determining if a use is fair. Developed by The University of Minnesota Libraries.

3. **Fair Use Evaluator** (http://librarycopyright.net/resources/fairuse)

Helps users collect, organize, and document the information they may need to support a fair use claim, providing a time-stamped PDF document for the users’ records. Developed by the American Library Association, Office for Information Technology Policy.

**Common Copyright Scenarios**

These scenarios are intended to help faculty and students evaluate fair use. These scenarios are illustrative, not exhaustive.

The examples deal with situations involving:

1. Printed Materials
2. Video Recordings
3. Multimedia Projects
4. Distance Education
5. Electronic Course Reserves
Printed Materials

Journal Article for Classroom Use

**SCENARIO 1:** A professor copies one article from a periodical for distribution to the class.

**FAIR USE?** Most likely. Distribution of multiple copies for classroom use is generally fair use the first time the resource is used. However, large class size or repeated use of a copyrighted work in future academic terms may weigh against fair use.

Posting Copyrighted Article to Web Page

**SCENARIO 2:** A professor has posted class notes on a web page available to the public. The professor wants to scan an article from a copyrighted journal and add it to the page to supplement the notes.

**FAIR USE?** Most likely not; if access is open to the public, then this is probably not a fair use. No exclusively educational purpose can be guaranteed by putting the article on the web, and such conduct would arguably violate the copyright holder's right of public distribution. If access to the web page is restricted, posting the article is more likely to constitute fair use.

Course Packs

**SCENARIO 3:** A professor copies excerpts of documents, including textbooks and journals, from various sources. The professor plans to distribute the materials to the class as a course pack.

**FAIR USE?** Most likely not, since this essentially constitutes re-publishing. Obtain permission before reproducing copyrighted materials for an academic coursepack. It's the instructor's obligation to obtain clearance for materials used in class. Copyright clearance services are generally used for this purpose.

Textbooks

**SCENARIO 5:** A professor wishes to use a textbook she considers to be too expensive. She makes copies of the book for the class.

**FAIR USE?** No. Although the use is educational, the professor is using the entire work, and by providing copies of the entire book to the students, she has undeniably affected the market. This conduct clearly interferes with the marketing monopoly of the copyright owner. The professor should place the book on reserve or require students to purchase it.

**SCENARIO 6:** A professor decides to make three copies of a textbook and place them on reserve in the library for the class.

**FAIR USE?** No. This conduct still interferes with the marketing monopoly of the copyright owner. The professor may place the textbook itself, not reproductions, on reserve.

Public Domain Materials

**SCENARIO 7:** A teacher copies a Shakespearian play from a copyrighted anthology.
FAIR USE? Yes. The play itself is in the public domain and not subject to copyright protection, though annotated works may contain material that has not yet entered the public domain.

Unpublished Letters

SCENARIO 8: A professor of psychology desires to edit and publish a collection of unpublished letters found in the library archives.

FAIR USE? The answer to this scenario requires further information. Are the letters subject to any agreement the library made with the donor? Can the author or authors of the letters be located? Is the library agreeable to publication? This question requires expert legal analysis.

Journal Article for Personal Use

SCENARIO 9: A professor wishes to make a copy of an article from a copyrighted periodical for research or to use later.

FAIR USE? Yes. This is a classic example of personal fair use so long as the professor uses the article for her personal files and reference.

Out-of-Print Book

SCENARIO 10: The library owns a book that is out of print and unavailable. The book is an important one in the professor's field that she needs for her research. The professor would like to copy the book for her files.

FAIR USE? Most likely. This is an example of personal use. If one engages in the fair use analysis, one finds that: (1) the purpose of the use is educational versus commercial; (2) the professor is using the book, a primarily factual work, for research purposes; (3) copying the entire book would normally exceed the bounds of fair use; however, since the book is out of print and no longer available from any other source, the copying is acceptable; (4) finally, the copying will have no impact on the market for the book because the book is no longer available from any other source.

SCENARIO 11: Using the same facts as explained in SCENARIO 10 could the professor copy the book and place the book on reserve in the library? Could the professor scan the book into her computer and post the book online?

FAIR USE? If the professor placed the book on reserve in the library, the use would be considered a fair use. However, if the professor placed the book on the Web, then the use is not a fair use. Placement on the Web allows unlimited access to the book. This would affect the copyright holder's public distribution of the book.

Out of print books may still be protected by copyright.

Video Recordings
Showing Video Material for Classroom Instruction

SCENARIO 12: A teacher wishes to show a copyrighted motion picture to her class for instructional purposes.

FAIR USE? Most likely, since it is for classroom instruction and no admission fee is charged. Tuition and course fees do not constitute admission fees.

Showing Video Material for Online Instruction

What if the teacher in SCENARIO 12 wishes to include a digital copy of the motion picture on a password-protected course website for teaching online?

FAIR USE? Most likely not. Teachers may post only "reasonable and limited portions" of media works when teaching online.

Copying Video Material for Classroom Instruction

SCENARIO 13: A teacher makes a copy of the video material described in SCENARIO 12 for a colleague to show in his class at the same time.

FAIR USE? No. The teacher may lend a personal copy of the video material to a colleague for this purpose but may not make additional copies.

Renting Video Material That Is in the Public Domain for Nonclassroom Use

SCENARIO 14: A professor wishes to raise funds for a scholarship. She rents a motion picture on which the copyright has expired and charges admission fees.

FAIR USE? Most likely. The copyright of the motion picture has expired, which places the motion picture in the public domain.

Renting Video Material That Is Copyright-Protected for Nonclassroom Use

SCENARIO 15: The facts are the same as those in SCENARIO 14 except that the movie is protected by copyright.

FAIR USE? No, because it infringes the copyright owner's right to market the work.

Multimedia Projects

Classroom Presentation with Visual Media

SCENARIO 16: A teacher or student prepares and gives a presentation that displays photographs. Permission was not obtained to use the photographs.

FAIR USE? Most likely. The copyright fair use provision explicitly provides for classroom use of copyrighted material. Instructors and students may perform and display their own educational projects or presentations for instruction.
Electronic Transmission or Broadcast of Classroom Presentation

What if the presentation incorporating the photographs discussed in SCENARIO 16 is broadcast to a distant classroom?

**FAIR USE?** Most likely. This use would likely be considered fair use if access to the presentation is limited to individuals who are enrolled in a course and viewing the presentation for purposes of criticism, comment, teaching or instruction, scholarship, or research.

Videotaping of Classroom Presentation

What if the teacher's or student's presentation explained in SCENARIO 16 is videotaped or otherwise recorded?

**FAIR USE?** Most likely. This use would likely be considered fair use, provided the recording is used for educational purposes such as student review or if the recording is for instruction.

Broadcast of Videotaped Classroom Presentation

What if the SCENARIO 16 presentation incorporating the photographs is videotaped and rebroadcast? Is this a fair use?

**FAIR USE?** Most likely. The use of the photographs is likely fair use as long as the presentation is videotaped and rebroadcast only for instruction.

Incorporation of Photographs in an Electronic Presentation (Excluding the Internet)

What if the SCENARIO 16 presentation is included in an electronic presentation such as Microsoft's Power Point?

**FAIR USE?** Most likely. This should be considered fair use as long as the electronic presentation is for educational or instructional use.

Making Changes to Photographs

What if the student or teacher were to change the attributes of the pictures discussed in SCENARIO 16?

**FAIR USE?** Most likely. This would likely be considered fair use for education, comment, criticism, or parody. One must inform the audience that changes were made to the photographer's copyrighted work.

Use of Copyrighted Music

**SCENARIO 17:** A teacher or student creates a presentation and incorporates copyrighted music into the background. Assume that permission was not obtained to use the music for the presentation. Can the music be included in the teacher's or student's initial presentation?

**FAIR USE?** Mostly likely. This is likely to be a fair use if instruction is occurring.
Use of Music in Videoconference Instruction

Same facts as SCENARIO 17. The presentation is broadcast to a distant classroom using two-way interactive video.

FAIR USE? Most likely. The use of interactive video for educational instruction is generally considered a fair use.

Use of Music in Videotaped Classroom Presentation

What if the teacher's or student's presentation described in SCENARIO 17 is videotaped or otherwise recorded?

FAIR USE? Most likely. This is probably fair use if instruction is occurring.

Use of Music in Broadcast of Videotaped Classroom Presentation

What if the SCENARIO 17 presentation is videotaped (or otherwise recorded) and rebroadcast?

FAIR USE? The answer is not clear. If instruction is occurring and there are no admission charges to the rebroadcast, analysis weighs in favor of fair use. Tuition and course fees do not constitute admission fees.

Use of Music as Content in a Classroom Presentation

SCENARIO 18: A professor teaches an opera course, and the professor creates a presentation. The presentation contains the works of ten contemporary artists and is presented to a new class every semester to accomplish specific teaching goals.

FAIR USE? Most likely, provided the use of the presentation continues to be for instruction.

Use of Music in Classroom Presentations on the Internet

What if the opera classroom presentation (SCENARIO 18) or the presentation containing background music (SCENARIO 17) is recorded and placed on the Internet?

FAIR USE? Most likely, so long as access is restricted only to members of the class.

Distance Education

Journal Article Posted in the Online Classroom

SCENARIO 19: A professor scans a journal article or book chapter and posts the file for an online course.

FAIR USE? Yes, posting an article for classroom use in this manner is generally fair use the first time the resource is used, provided access to the article is limited to students enrolled in the course. However, large class size or repeated use of a copyrighted work in future academic terms may weigh against fair use.
Downloaded Article Posted Online

SCENARIO 20: The professor finds an article freely available online and downloads the article. She posts the downloaded file in the password-protected online course.

FAIR USE? Yes, this is likely fair use the first time the document is posted; however, the document is protected by copyright even though it was located free of charge online. The preferred way to provide access to online documents is to post a link directing students to the article's location online.

Films or Other Multimedia Posted in an Online Classroom

SCENARIO 21: Each term, a faculty member shows a film that illustrates some important curricular ideas in his face-to-face course. He is developing the same course for online delivery and digitizes the film, posting it in the online classroom and making it accessible only to students in the course.

FAIR USE? No. Even though fair use has been interpreted to allow the professor to show the entire film in a face-to-face teaching environment, the TEACH Act stipulates that only excerpts may be used in the online version course.

Student Project for Distribution on the Internet

SCENARIO 22: A student is taking a class for which the instructor has required that a particular assignment be created for unlimited distribution on the web. A student includes an audio segment of copyrighted music (video, news broadcast, or non-dramatic literary work).

FAIR USE? Most likely not. Since the teacher specifically stated that the project is being created for distribution over the web, this is not a fair use of any of the listed copyrighted materials and permission should be obtained.

Student Project on the Internet with Restricted Access

Access to the work of the student in SCENARIO 22 will be restricted to other students in the class.

FAIR USE? Most likely.

Electronic Course Reserves

(Electronic Course Reserves are not available at Kuyper College at this time).

Placing a Book Chapter on the Library's Electronic Reserves

SCENARIO 23: A professor wants to add a book chapter to the library's electronic reserve system.

FAIR USE? Most likely. The chapter may be added if access to the system is limited to students enrolled in the class.
Retention of Book Chapters on Electronic Reserve

**SCENARIO 24:** The professor in SCENARIO 23 will be teaching the same course for three successive terms. She wants to leave a book chapter on the electronic reserve system for this period of time.

**FAIR USE?** Most likely not, unless access is limited to students and the work is out of print and not readily available.

**What is “public domain?”**

Works in the public domain are not subject to the protection of copyright law. Unless these works are protected in some other way, such as trademark registration, they may be used by anyone for any purpose.

The most frequently used public domain works are classic literature or music. If the public domain status of an item seems uncertain, confirm its availability prior to duplicating or using the material. **Play It Safe.** Most of the works likely to be used in the classroom fall into the public domain 70 years after the death of the author, artist, or creator. Prior to the expiration of copyright, permission to use the work is required unless a fair use analysis indicates otherwise.

Works created by the U.S. government are immediately available in the public domain.

**When do works enter the public domain?**

Works fall into the public domain for several reasons:

The date of creation of a work determines the duration of copyright protection and determines when that protection expires.

1. Works created on or after 1978: protection lasts for the life of the author (creator) plus seventy years; “works for hire,” anonymous and pseudonymous works are protected for 95 years from publication or 120 years from creation, whichever is shorter
2. Works created before 1978: these works required a precise copyright notice and the copyright required renewal for an additional 28 years. In the early 1960s, the renewal period was extended to 47 years for a total of 75 years. In 1998 Congress added another twenty years of protection. Generally, a work published before 1978 can have a maximum term of protection of 95 years (Crews, p. 25-26)
3. Works published in the U.S. before 1923 and those published between 1923-1963 that did not renew their copyright registration are also in the public domain
4. Works published before March 1989 that failed to include a proper notice of copyright are in the public domain
5. All federal government (but not all state and regional) publications are not protected by copyright
6. General information such as facts, numbers, and ideas are in the public domain

Use the [Copyright Slider Tool](http://www.librarycopyright.net/resources/digitalslider) to determine whether a work is still protected by copyright.

More information available at:

[ Cornell University Copyright Resources](https://copyright.cornell.edu/resources/publicdomain.cfm)

[Copyright Term and the Public Domain in the United States](https://copyright.cornell.edu/resources/publicdomain.cfm)

[University of North Carolina](https://copyright.cornell.edu/resources/publicdomain.cfm)
What is the doctrine of “first sale?”

This exception to copyright protection provides that once the copyright owner authorizes the release of lawfully made copies of their original work, those copies may be passed along to others by sale, rental, loan, gift, or other types of transfer. This provision enables book vendors to sell books and libraries to loan materials. The first sale doctrine does not permit reproducing the material, publically displaying it or performance of the work. The transfer of the physical copy does not equal the transfer of the copyright holder’s rights to the work.

Copyright Compliance

Copyright law is intended to protect the creative and intellectual property of a work's creator. Its counterpart, fair use, aims to identify circumstances in which the unauthorized use of protected material is permitted. The compliance guide for faculty examines specific situations and provides guidance for professors as they seek to use materials for educational purposes.

Options for obtaining permission to reproduce protected material include the following:

1. Contact the Copyright Clearance Center at www.copyright.com. Kuyper College has a “Pay-per Use” account with the CCC. The site includes the capability of searching for information on specific titles. Please see one of the librarians for assistance or if you need the account number for the college.
2. Contact the copyright holder directly to request permission to use their work(s).

Alternatives to Requesting Permission

Due to cost or time constraints, professors sometimes choose to use materials for which permission is not required or to provide access in ways that do not constitute duplication.

Professors who desire an alternative to pursuing copyright permission may consider the following options:

1. Provide links to material that is freely available on the open Web or on such sites as Creative Commons.
2. Determine whether the library offers the desired material through its subscription databases; provide a link to the article's persistent URL.
3. Provide only materials that a fair use analysis indicates may be used without permission. Select new materials each term.

Copying for Classroom Use

Copying of copyrighted materials for student learning and research use without written permission may occur in the following instances:
Multiple copies for student learning

Multiple copies (not to exceed more than one copy per student in a course) may be made by or for the teacher giving the course for student learning use or discussion; provided that the following three criteria are met:

1. The copying meets the tests of brevity and spontaneity (as defined below).
2. The copying meets the cumulative effect test (as defined below).
3. Each copy includes a notice of copyright like the following: "This material may be protected by Copyright law (title 17, US Code)."

Definitions:

**Brevity:** Either a complete article, story, or essay of less than 2,500 words, (usually varies 3-8 pages depending on size of page and type) or an excerpt from any prose work of not more than 1,000 words or 10 percent of the work, whichever is greater.

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

**Cumulative effect:** Copying of the material is for only one course in the school in which the copies are made.

Special Cases

Worksheets, study guides, and other materials that are intended to be "consumable" never satisfy the fair use requirements. These items ought never be used without permission of the copyright holder.

Do I really need permission?

If you answer "yes" to any of the following questions, obtain permission from the copyright holder prior to distributing material to students via photocopies, electronic copies, or copies in any other format:

1. Have I used this material previously for this course?
2. Am I providing this material as a direct substitute for purchasing the work itself or a larger resource?
3. Does this work comprise more than 2500 words (complete works)?
4. Does this portion comprise a substantial part of the larger work from which it is drawn?

When permission is required, obtain it by writing directly to the rights holder or by working with a copyright clearance provider such as Copyright Clearance Center ([http://www.copyright.com/get-permissions](http://www.copyright.com/get-permissions)) Clearance and copying fees will ordinarily be passed on to students via course lab fees. Upon special situations, the professor may contact the Program Accounts and/or the Department Chair for available funds.

Copyrighted materials may be duplicated only when presented with a permission letter from the rights holder (or a clearance service) or a completed fair use analysis checklist. Permission letters specify the academic term for which permission has been granted, along with the total number of copies authorized by the rights holder.
Copying for Personal Use

Single copying for teachers

Single copies may be made of any of the following by or for teachers at their individual request for scholarly research or use in teaching or preparation to teach a class:

1. One chapter from a book;
2. An article from a periodical, journal, or newspaper;
3. A short story, short essay, or short poem, whether or not from a collective work;
4. A chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper.

Copies made under these guidelines may be used only by the individual professor for research or preparation.

Always Ask Permission

Legal opinion sides with publishers in the creation of academic course packs; the copying of materials for educational purposes does not inherently constitute fair use. Permission to use articles, images, or excerpts must be obtained, and licensing fees will likely be required.

Course packs created without proper clearance from the rights holders place the college and the individual professor at risk for legal action.

Create Your Course Pack

Consider Copyright Clearance Center (http://www.copyright.com) for copyright clearance services and the creation of print or digital course packs. In nearly every case, collections of articles, book excerpts, and similar readings require copyright clearance. Copyright Clearance Center also offers clearance services, but lacks publishing services for course packs.

Campus bookstores will sometimes produce course packs or multiple copies for classroom use according to the following guidelines:

1. Copyright protected materials: Proof of copyright clearance, including the total number of copies permitted, for the current academic term must be provided prior to copying.
2. Original materials (unpublished): Materials must be entirely the original work of the course professor (for example, lecture notes or study guides). Unpublished student work may not be reproduced without written permission from the student author/creator.
3. Original materials (published): Proof of clearance from the copyright holder (or proof that the professor retains the copyright) must be provided. Published authors generally do NOT retain copyright for their work.

Published workbooks, study guides, standardized tests, and other resources considered "consumable" may not be copied for any reason.
Reserve Suggestions

Consider placing the following types of material on hard copy reserve at the Circulation Desk in the library:

1. Books from supplemental reading lists
2. Journal articles as allowed by Fair Use guidelines
3. DVDs and other formats, within Fair Use rules
4. Sample papers (with permission)

Placing Materials on Reserve

Zondervan Library offers faculty the opportunity to place course-related items on library reserve, provided that use of the material complies with US Copyright Law (Title 17 U.S.C. Section 107, http://www.copyright.gov/title17/) and the fair use guidelines.

Items should be submitted to one of the librarians to be placed on reserve. If there is a question regarding copyright compliance the librarians may decide not to place the item(s) on reserve.

Review the “Common Copyright Scenarios” section for more guidelines on fair use and course reserves.

Copying Computer Software

Computer software is tangible material and can be copyrighted. The Doctrine of Fair Use applies to computer software just as it does to journal articles, musical compositions, or other protected materials.

Permissible uses of copyrighted software owned by or licensed to the College or its faculty:

1. Copying it by using it in a computer's memory.
2. Making one backup or archival copy.
3. Making adaptations in order to use a particular machine.
4. Lending it.
5. Selling it, in which case the backup or archival copy must be destroyed.

Prohibited uses of copyrighted software:

1. Making copies for gift or sale.
2. Copying a computer program purchased for use at the college in order to use it at home.
3. Copying a computer program purchased for use in one department or school for use in another department or school.

Copyright for Music Applications

What you CAN’T do:

The following are expressly prohibited:

1. Copying to avoid purchase
2. Copying music for any kind of performance (note emergency exception below)
3. Copying without including copyright notice
4. Copying to create anthologies or compilations
5. Reproducing material designed to be consumable such as workbooks, standardized tests and answer sheets
6. Charging students beyond the actual cost involved in making copies as permitted

What you CAN do:
What you can do without having secured prior permission:

1. Emergency copying to replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.
2. For academic purposes other than performance, multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section, movement, or aria but in no case more than 10% of the whole work. The number of copies shall not exceed one copy per pupil.
3. Printed copies which have been purchased may be edited OR simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.
4. A single copy of recordings of performance by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.
5. A single copy of a sound recording (such as a tape, disc or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

General Guideline – if in doubt, DO NOT COPY!

Frequently asked questions about copying music:

Q - Can I make a copy of my song for my accompanist to play from? After all, I did buy the book.
A - Not legally. You have purchased the right to use a single copy of your music. Purchasing the book does NOT grant you the right to duplicate it, not even “just once”. Most music schools around the country are in agreement that compliance with the law requires accompanists to play from original scores, not copies in three ring binders. This IS something the copyright police will check for if they visit a music school.

Q – Doesn’t Fair Use mean I can copy whatever I want if it’s for a class?
A – No. There are fairly strict guidelines for appropriate application of the Fair Use doctrine. In general, the less you use of a work, the more likely it is to be approved under the Fair Use doctrine – hence, you cannot copy entire movements or large sections, but excerpts (a few bars or a page or two from an orchestral score are typical acceptable examples) are allowed.

Q – Can I burn a CD of a single song for a student to learn a new piece?
A – Not legally. The student should purchase the CD (or download the single song from iTunes or a similar service). Audio recordings cannot be duplicated and distributed for ANY reason without permission, even for classroom use. Audio recordings are MUCH more tightly policed than printed music copyright violations, and have been prosecuted actively by the RIAA (Recording Industry Association of America), particularly at colleges and universities.
Q – I want to use a work, but can’t get in touch with the copyright holder, or they aren’t responding to me. May I still copy it?

A – No. Just because you cannot contact someone does not grant you permission to copy their copyrighted work.

Q – I need to get more copies of something that is out of print. May I copy it?

A – Yes, but you MUST obtain permission from the publisher FIRST to be covered legally. Most publishing companies are very willing to grant permission in these cases, BUT YOU HAVE TO ASK FIRST. For your own protection, always keep a record of any permission granted. Do not copy without written permission!

Useful Music & Copyright Links

- CCLI – Administrator of Copyright for Churches and Religious Organizations (http://us.ccli.com)
- Music Publisher’s Association: Copyright Clearance Center (www.mpa.org/content/copyright-resource-center)
KUYPER COLLEGE COPYRIGHT POLICY

Policy Regarding Use of Copyrighted Materials

Kuyper College requires that its faculty, staff, and students respect the intellectual property rights of others, and be mindful of the rights conferred on them by the fair use exemption to the copyright laws.

All faculty, staff, and students are responsible for complying with the requirements of federal copyright law. From time to time, Kuyper College will publish guidelines regarding the use of copyrighted material, and all faculty, staff, and students are responsible for complying with such guidelines. This includes the responsibility to obtain required written permissions to use copyrighted materials. Making unauthorized copies of copyrighted material, including licensed software and music, is prohibited.

Disciplinary action may be taken against those who violate this policy. The illegal distribution of copyrighted materials may also subject a person to criminal and civil penalties.

Reports of possible infringement by members of the Kuyper College community should be made to Kyle Wigboldy, Registrar.

Guidelines Regarding Use of Copyrighted Materials

The following is provided to give answers to frequently asked questions regarding copyright law, and to demystify copyright law as much as possible.

What is copyright?
Copyright is a form of legal protection that allows creators such as authors and photographers to control the reproduction and distribution of their work. In general, copyright holders have the exclusive right to do the following:

1. Reproduce the work in whole or in part;
2. Prepare derivative works, such as translations, dramatizations, and musical arrangements;
3. Distribute copies of the work by sale, gift, rental, or loan;
4. Publicly perform the work; and
5. Publicly display the work.

These rights have exceptions and limitations, some of which are described below.

What is protected by copyright?
Copyright protects works of authorship such as literature, music, painting, photography, dance, and other forms of creative expression. In order to be protected by copyright, a work must be:

1. Original (created independently and not copied);
2. Creative; and
3. Fixed in a tangible medium of expression (for example, written on a piece of paper, saved on a computer hard drive, recorded in an audio or video tape, etc.).
What isn't protected by copyright?

There are things that are not protected by copyright, including:

1. Facts and ideas;
2. Processes, methods, systems, and procedures; and
3. Materials that have passed into the public domain (see below).

How do works become protected by copyright?

Copyright occurs automatically upon creation of a new work. The moment the work is fixed in a tangible medium of expression, it is subject to copyright protection. Today, formal procedures such as copyright notice, registration, or publication are not required to obtain copyright. This means that just about all recent original works are subject to copyright. This includes not just published material, such as books and articles, but also emails and letters, assignments, drafts, and snapshots.

A copyright owner does not have to provide a copyright notice on his or her work to receive copyright protection (although using a notice is always a wise choice).

A copyright owner also does not have to register his or her work to receive and retain copyright protection, but registration does confer a number of legal benefits. A work may be registered at any time while it is still protected by copyright. Registering is not difficult. For instructions and forms, visit http://www.copyright.gov.

How long does copyright last?

Today, copyright lasts from the moment a work is created until 70 years after the death of the author, except for works produced by a company/employer, in which case the copyright lasts 95 years from the date of publication. For many works, however, calculating duration of copyright can be very complex. Publications regarding these calculations are available through the Copyright Office at http://www.copyright.gov.

How do I know whether a work has passed into the public domain?

After the term of the copyright has ended, the work will lose its copyright protection and fall into the public domain, where it may be used freely without permission. Works created by officers and employees of the United States government are not covered by copyright protection and are within the public domain. This includes government reports and data and informational publications of government agencies. A work is not considered to be in the public domain simply because it does not contain an affirmative statement of copyright ownership or copyright notice.

Who is the owner of a copyrighted work?

The creator is usually the initial copyright holder. If two or more people jointly create a work, they are joint holders of the copyright, with equal rights. Absent an agreement to the contrary, each joint author can grant third parties permission to use the work on a non-exclusive basis without the consent of the other joint authors.

If a work is created as a part of a person’s employment, that work is a “work made for hire”, and the copyright belongs to the employer, unless the employer explicitly grants rights to the employee in a signed agreement. In
the case of work by independent contractors or freelancers, the copyright belongs to the contractor or
freelancer unless otherwise negotiated beforehand, and agreed to in writing.

It is possible to transfer or assign all or part of a copyright; this frequently happens as a part of publishing
agreements. In many cases, the publisher holds the copyright to a work, and not the author. A valid copyright
transfer requires a signed written agreement.

**How do I know if the work I want to use is copyrighted?**

Because copyright protection happens so easily, and lasts so long, you should assume that any work you want
to use is copyrighted, unless it is very old or produced by the U.S. government.

Copyright has expired for works published in the United States before 1923, which means they are in the
public domain. You are free to use or reproduce works in the public domain however you want. In addition,
some works published between 1923 and 1963 may also be in the public domain, but this can only be
determined on a case-by-case basis. All works created after 1963 are under copyright, except for works
produced by the U.S. government, and state constitutions and laws. If you are trying to determine whether a
work published during that time period is still under copyright, the Stanford Copyright Renewal Database
(https://collections.stanford.edu/copyrightrenewals) is a good place to start.

**What is fair use?**

Fair use allows limited use of copyrighted material without permission from the copyright holder for purposes
such as criticism, parody, news reporting, research, and scholarship, and teaching. **Just because your use is
for non-profit educational purposes does not automatically give you permission to copy and
distribute other people’s work.** While many educational uses may be fair, you should evaluate your use each
time you are reproducing copyrighted material to show in your class, to hand out copies, to include in your
writing, etc.

There are four factors to consider when determining whether your use is a fair one. You must consider all the
factors below, even though all the factors do not have to be in favor of a use to make it a fair one.

The four fair use factors are as follows:

1. The purpose and character of the use, including whether the use is of a commercial nature or is for
nonprofit educational purposes;
2. The nature of the copyrighted work, such as whether the work is fiction or non-fiction (because some
courts have found that creative works of fiction are more likely to be protected by copyright than
factual works), published or unpublished;
3. The amount of the work used in relation to the copyrighted work as a whole, such as using a poem in
its entirety, or using one chapter from a long book;
4. The effect of the use upon the potential market for the copyrighted work.

**How do I know if I am allowed to use a work in a classroom?**

The rules governing use of materials in a face to face classroom are broader than fair use, and those rules give
you more leeway as far as what you are allowed to copy, display, and distribute in your classes. You may
display or perform a work in a class without obtaining permission or doing a fair use evaluation when your use
meets all three of these criteria:
The use is for:

1. instructional purposes;
2. face-to-face teaching; and
3. a nonprofit educational institution.

Uses you are allowed to make include:

1. showing all or part of a movie or television show;
2. including pictures, images, graphs, and charts in your lecture slides; or
3. playing music

How do I know if I am allowed to include a work in my writing?

One goal of fair use is to allow the inclusion of quotations and excerpts in scholarly works without seeking permission. Some people believe that there are hard and fast numbers to determine how much of a work you may legally use, but that is not the case. Every use is different, and must be considered individually.

If you are writing a book or article for publication, your publisher may want you to get permission for the use of all copyrighted material, even uses that you may think are fair. Because every publisher has its own policy on what it considers to be legally safe, it would be impractical for you to try to clear rights before you receive an offer for publication. However, you should be aware that you may be responsible for clearing permissions for publication and that there may be a cost associated with acquiring those rights.

How do I know if I am allowed to use a work in a distance learning class?

The Technology, Education, and Copyright Harmonization Act (TEACH Act) says that teachers and students at accredited educational institutions can use works for distance learning without permission under certain circumstances.

If you:

1. are an educator at an accredited educational institution,
2. will supervise your students’ use of copyrighted materials (e.g., by including a notice that the materials are protected by copyright, by using technology that reasonably limits the students’ ability to retain or further distribute the materials, by making the materials available to students only for a limited period of time and then terminating access upon completion of the course),
3. are using the material as an integral part of a class session,
4. are using the material as an integral part of your curriculum, and
5. are using the material that is directly related to and of material assistance to your teaching content,

and you plan to use copyrighted works in the following ways:

1. performances of nondramatic literary works (i.e., a recording of a novel being read aloud);
2. performances of nondramatic musical works (i.e., a recording of a symphony);
3. performances of reasonable amounts of any work (i.e., an excerpt from a movie); or
4. display of any work in an amount comparable to what would be used in a live classroom.
then your use aligns with the Teach Act. For more help, see the American Library Association’s “The TEACH Act and Some Frequently Asked Questions,” (http://www.ala.org/advocacy/copyright/teachact/faq), which provides additional information about copyright and distance education.

What if I got the work from a website?

Just because something is freely available on a website does not mean it is in the public domain. Works residing on a site that makes no mention of copyright should be presumed to be copyrighted.

You may encounter works online for which the author or creator specifically grants rights to use them, such as those released under a Creative Commons license. A Creative Commons license allows you to make certain uses of a work without asking for permission, provided you follow the terms set by the creator.

What if I created the work?

Unless you created the work as part of your job as an employee or under contract as a work for hire, you are the author and the initial copyright holder. However, if you have transferred your copyright to someone else, such as a journal publisher, you are no longer the copyright holder and may not have any privileges to use the work. If you are not sure, you should consult your agreement to see if you have retained any rights.

If you have not retained rights to use your work, then you must treat it like any other copyrighted work — decide whether the use you want to make is a fair use, and if it isn’t, then ask for permission.

What if a student created the work?

Students hold the copyright to the academic works they create, such as their papers, projects, theses, and dissertations. There are also privacy concerns related to the use of student work (for example, under the Family Educational Rights to Privacy Act). If you wish to use student work, ask for permission.

What if the work was published outside the US?

There are differences in copyright law across countries. The Berne Convention, signed by 163 countries, requires that countries recognize the works of foreign authors the same way they do those of their own nationals. For example, all works performed or published in the US, are subject to the terms of US copyright law, no matter where they were created originally. Most countries have standardized their copyright terms, so foreign copyrights tend to last as long as U.S. copyrights: the life of the author plus 70 years. When determining whether or not you can make a particular use of a foreign work, you will need to consider the specific circumstances of your case, such as the country where the work originated, whether or not the work is in print, and how you plan to use the work.

What does it mean if a work is Creative Commons licensed?

Creative Commons is a non-profit organization that created a set of simple, easy-to-understand copyright licenses. These licenses allow creators to mark a work with permission to make a variety of uses, with the aim of expanding the range of things available for others to quote, adapt, and build upon. Creative Commons licenses do two things: They allow creators to share their work easily, and they allow everyone to find work that is free to use without permission. As long as you obey the terms of the license attached to the work, you can use Creative Commons licensed material without fear of accidentally infringing someone’s copyright.
How do I request permission to use a copyrighted work?

If you want to use someone else’s copyrighted material, your next step is to ask for permission.

1. **Identify the copyright holder.**

   To begin with, you need to identify the copyright holder. For many works, the publisher is the copyright holder. Look for a copyright notice such as “© 2003 C. Holder” or “copyright by C. Holder, 2003.” Unfortunately, not all works will include a copyright notice, and it is also possible that the copyright has changed hands since the notice was printed.

   For older works, especially for materials like photographs and audio recordings, it may be impossible to identify and locate the copyright holder — these are called “orphan works.” Always keep documentation of your search for a copyright holder. There is still some risk associated with using orphan works, and in the event that you cannot find the copyright holder but decide to use the material anyway, documentation of your search could prove useful.

   There are a number of organizations that can help you identify and contact copyright holders. The Copyright Clearance Center ([http://www.copyright.com](http://www.copyright.com)) handles a large quantity of academic permissions requests, and may be a good place to start your search.

2. **Identify the rights you need.**

   Because so many rights are associated with copyrighted works, you must specify the rights you need. This can be as simple as stating your intended use (e.g., you want to display a graphic in a PowerPoint presentation), the length of time that you need to use the work, the geographic area in which you want to use the work, etc.

3. **Negotiate whether payment is required.**

   Although many uses of works may be free, you should usually expect to pay something (perhaps even a minimal fee) for copyright permission. Generally, these fees are proportional to the size of the audience your work will reach.

4. **Ask for permission.**

   Once you have identified the copyright holder, the next step is to ask for permission. An increasing number of publishers prefer that you make your request using a form on their websites. Others may require that you make your request via fax or email. Whenever possible, make your request in the format preferred by the copyright holder. If the copyright holder does not have a set form for
permission requests, send a letter. If you are sending your letter by mail, include an extra copy for the rights holder to keep, and a self-addressed stamped envelope for the reply.

5. Get permission in writing.

Written permission specifying the work, the permitted use, the copyright holder, and the person/party to whom permission has been granted should be obtained prior to use of the work. A copy of all documents granting permission should be given to Kyle Wigboldy, Registrar.
COPYRIGHT RESOURCES

Copyright Books in Zondervan Library

1. Copyright Law for Librarians and Educators: Creative Strategies and Practical Solutions by Kenneth D. Crews

   Call Number: KF2995 .C74 2012

   ISBN: 9780838910924

   Publication Date: 2012 (3rd ed.)

2. Managing Copyright in Higher Education by Donna L. Ferullo

   Call Number: Z642 .F47 2014

   ISBN: 9780810891487

   Publication Date: 2014
Web Sites: Useful Links

Texts of Copyright Law:

- U.S. Copyright Office (http://www.copyright.gov/) Besides the text of the laws, it includes tutorials, FAQs, an index of fair use legal cases, and the ability to search for copyright information on specific works.

Instructional Materials on Copyright:

- Copyright Advisory Office (https://copyright.columbia.edu) A comprehensive copyright resource form Columbia’s Copyright Advisory Office.

- Copyright Clearance Center. “The Campus Guide to Copyright Compliance” (http://www.copyright.com/Services/copyrightoncampus/) This very informative document includes sections on copyright basics, using content, copyright compliance, other campus copyright issues, and quick links.

- Copyright Resources (http://dpi.wi.gov/rl3/resources/copyright) A collection of annotated links on copyright from the Wisconsin Department of Public Instruction.


- Guide to the TEACH Act (http://www.usg.edu/legal/teach_act) This guide from the University System of Georgia provides an introduction to this 2002 legislation that extends the fair use doctrine to distance education.

- Stanford University. “Copyright and Fair Use” (http://fairuse.stanford.edu/overview/) Includes an overview, resources, tools and charts, and the law.

- University of North Carolina at Charlotte. “The Essential Copyright” (http://copyright.uncc.edu/) This is a very thorough, well organized, understandable and practical web site. Besides a basic overview of copyright, it includes sections on what can be put on a CMS course and also includes “The Original TEACH Act Toolkit.”

- University of Texas Libraries. “Copyright Crash Course: The TEACH Act” Provides a very helpful review and guide to the TEACH Act. http://copyright.lib.utexas.edu/teachact.html

Documents Specifically for Faculty:

- 1 State University. “Copyright for Distance Educators” (http://cms.bsu.edu/academics/libraries/collectionsanddept/copyright/copyrightdistance) Includes information for using the TEACH Act.

- Cornell University. “A Faculty Guide to Copyright” (http://copyright.cornell.edu/policies/docs/Brochure_FG.pdf)

Sample Fair Use Checklists:


- University System of Georgia. Fair Use Checklist. (http://www.usg.edu/assets/usg/docs/copyright_docs/fair_use_checklist.pdf)

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Searching for Copyright Information on Specific Titles:

- Google has recently digitized the Catalog of Copyright Entries (http://onlinebooks.library.upenn.edu/cce/) from 1923-1978
- U.S. Copyright Office (http://www.copyright.gov/) will conduct a search for a fee.

Tools for Determining When Works Pass into the Public Domain:

- Cornell University. “Copyright Term and the Public Domain in the United States (1 January 2015) (http://copyright.cornell.edu/resources/publicdomain.cfm)

Links to Legitimate Free Materials on the Web:

- Creative Commons (https://creativecommons.org/) This is a nonprofit organization that enables sharing and use of creativity and knowledge through free legal tools. Through easy-to-use copyright licenses, CC provides a way to give the public permission share and use creative works. CC includes „hundreds of millions“ of works including songs, videos, scientific, and academic works.
- Digital Public Library of America (DPLA) (http://dp.la/) — a collection of more than 11,000,000 items from libraries, archives and museums. These are openly accessible materials, many of which are in the public domain. Some may require permission to use which will be included under the „Rights“ category for each item record
- Internet Archive (https://archive.org/index.php) — millions of free books (including audio books), movies, software, music and more
- Library of Congress. American Memory (https://memory.loc.gov/ammem/index.html) — historical material that includes images, digital collections, performing arts, film, sound recordings and educational materials
- Musopen (https://musopen.org/) — collection of recordings, sheet music, and textbooks available to the public for free, without copyright restrictions
- New York Public Library. Digital Collections (http://digitalcollections.nypl.org/) — more than 180,000 digital images that are in the public domain and can be used without requesting permission
- SoundBible.com (http://soundbible.com/) — a collection of free sound clips, sound bites and sound effects
- Web Gallery of Art (http://www.wga.hu/) — over 36,000 reproductions of Western fine art from 1000-1900

Avoiding Plagiarism: tips from university writing centers

- Avoiding plagiarism: tips from Indiana University Writing Center (http://www.indiana.edu/~wts/pamphlets/plagiarism.shtml)
- Avoiding plagiarism: tips from Purdue University “OWL” (https://owl.english.purdue.edu/owl/resource/930/01/)
Works Cited
