

Copyright at Bethel

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Introduction

We wish to acknowledge the use of Stanford's "Copyright, File-Sharing & Technology Overview" and Earlham's "Copyright at Earlham" documents as documents that helped in the creation of this document. Some of the wording of those documents has been retained in this document.

Basics of Copyright

Purpose of Copyright

Except for certain provisions, only the copyright holder can "copy" the work. The following is from Title 17, Section 106 of the U.S. Code :

The owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

Exceptions to the Copyright Holder's Exclusive Rights

In academia, the main exceptions to the copyright owner's exclusive rights are:

- Fair use (Sec. 107)
- Face-to-face teaching exception (sec. 110 (1))
- Distance-learning exception (TEACH act)
- Library and archives exception (sec. 108)

If the intended use does not fall into one of the above exceptions, then permission must be sought to copy the work.

The text of the copyright law can be found at: <http://www.copyright.gov/title17/>

Who Owns the Copyright?

The author or creator of the work is the owner of the copyright. The author may sell the copyright to another entity. If the work is done for hire, the employer owns the copyright

Copyright protection subsists from the time the work is created in fixed form. The copyright in the work of authorship immediately becomes the property of the author

*who created the work. Only the author or those deriving their rights through the author can rightfully claim copyright.*¹

Because copyright protection “subsists from the time the work is created in fixed form,” no registration or copyright symbol is needed for a work to be considered under copyright protection. Registration is a tool designed to help the owner of a work enforce his or her right to copy that work.

Length of Copyright

- For works created on or after Jan. 1, 1978, it is the author’s life plus 70 years.
- For works created before Jan. 1, 1978, works needed to be registered, then work was copyrighted for 28 years and the work could be renewed for 47 years.
- Works created before 1923 are in the public domain.

For more information, see: <http://www.copyright.gov/circs/circ15a.pdf>

Public Domain

Works in the public domain are NOT under copyright protection and may be copied without restriction. Works published before 1923 are in the public domain. Some works that were published after 1923 but before 1963 did not have their copyright registration renewed, so those works are now in the public domain. However, research needs to be done to find out if the copyright protection expired.

The following tool can be used to help you determine if a work in the public domain:
<http://librarycopyright.net/digitalslider/>

Individual Action

Individuals are liable for their own actions. Bethel College is not required to defend an individual who knowingly fails to comply with the College's Policy on Copying, fair use guidelines, and any licenses that affect the rights to use others’ works. The College expects those using the materials to be familiar with the guidelines and abide by them.

Fair Use

Fair use allows for limited use of copyrighted material for educational and research purposes. However, to claim a use of a copyrighted work falls under the fair use provisions, a four-part test is used. The test does not offer hard and fast guidelines, and its use is dependent on specific circumstances. Each factor is considered when determining if a use falls under fair use; to meet the fair use provisions, all four factors have to lean towards fair use. For example, your use of a work may be educational (probably fair use), but if the effect harms sales of a copyrighted work (probably not fair use) then this factor may outweigh the educational purpose of the use.

¹ Copyright Basics (<http://www.copyright.gov/circs/circ1.html#wci>)

The four factors are:

Purpose: How will you use the work? Educational, nonprofit, and personal use are favored; and, commercial use of the work is generally disfavored. This doesn't mean that just because something is used in an educational setting that it is automatically considered "fair use." Rather, if the use of the work builds upon, criticizes, comments on, or adds to the original work, then that use is favored over usage that simply disseminates the work. For example, using the work in a research paper is preferred to using a work as a part of a course pack.

Nature of the Work: This refers to the nature of the work that is being copied. Some things to consider are:

- Is the work "consumable?" (Ex. Workbooks) Copying consumables normally is not considered fair use.
- Is the work out of print? Out of print works are still under copyright protection. Courts, however, determine the final legality.
- Is it print or media? Using print works generally falls under fair use. Audiovisual material is less so.
- Is it factual or fictional? Factual works are more likely to fall under the fair use clause.

Amount of the Work Used: There are no "hard and fast" rules about how much of a work that can be used. However, the more of a work that is used, it becomes less likely that that use can be considered "fair use." The measure takes in both quantitative and qualitative factors. Using a whole work usually never falls under fair use.

Effect of Copying Material: This test is dealing with effect of copying the work on sales of the work. That is, if the copying adversely affects the sale of the work, then that copying is probably not falling under "fair use." For example, if a professor were to take several short stories from an anthology, copy those stories, and then distribute those stories as a course pack, that use would probably not fall under fair use since the use of that material would mean that sale the anthology would be adversely affected.

The following tool can be used to help you determine if your intended use of copyrighted material falls under fair use:

<http://librarycopyright.net/fairuse/>

Face-to-Face Teaching Activities

The Copyright Act does permit the display or performance of copyrighted works "in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction" (Sec. 110 of the Copyright Law). The law does stipulate that if you are showing an audiovisual work that only legal copies may be used in the showing. This exclusion does NOT permit copying or distributing the work; it only applies to displaying or performing a copyrighted work.

Online Distance Education (TEACH act)

Purpose of law: The law was enacted to allow some of the benefits accorded in Face-to-Face teaching activities to apply to online distance education programs. Prior to this law, the only protections granted distance education programs were the Fair Use provisions which usually do not only apply in distance education. (The main implication is that to use copyrighted material in an online course one had to seek permission to use the material.) The TEACH allows:

1. Transmitting performances of all of a non-dramatic literary or musical work

Non-dramatic literary works as defined in the Act exclude audiovisual works; thus, examples of permitted performances in this category in which entire works may be displayed and performed might include a poetry or short story reading. Non-dramatic musical works would include all music other than opera, music videos (because they are audiovisual), and musicals.

2. Transmitting reasonable and limited portions of any other performance

This category includes all audiovisual works such as films and videos of all types, and any dramatic musical works excluded above.

3. Transmitting displays of any work in amounts comparable to typical face-to-face displays

This category would include still images of all kinds.²

To use the provisions of the TEACH act, we need to:

- Be an accredited, non-profit institution
- Have a copyright policy
- Have a program to instruct faculty and staff in copyright basics
- Provide notice to students in programs that the materials they use may be under copyright protection
- Limit access to the content:
 - To only students enrolled in the class
 - Only for the duration of the class
 - Material cannot be downloaded to another computer (e.g. only streamed content, nothing that can be sent to the “local” computer)

See the following:

Text of law itself: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_bills&docid=f:s487es.txt.pdf

Guidelines: <http://www.utsystem.edu/ogc/intellectualproperty/teachact.htm#checklist>

² This list is available at: <http://www.utsystem.edu/ogc/intellectualproperty/teachact.htm>

Library Copyright

Libraries and archives are provided some exemptions from copyright. The purpose of the exemptions is to allow libraries and archives to retain the original work for “preservation” purposes and to have the copied version used for “access” purposes.

Library Reserve Guidelines

When an item is placed on reserve, the following guidelines will be used to determine if copied items will be able to be included in the Library’s reserve system.

1. The Library’s reserve personnel will examine the copied material to see if that material falls within fair use guidelines. Only copies of single articles or chapters, or other small portions of a work will be allowed. The fair used standards used are:
 - a. The purpose and character of the use.
 - b. The nature of the copyrighted work
 - c. The amount and substantiality of the portion used in relation to the copyrighted work as a whole.
 - d. The effect of use on the potential market for or value of the work.
2. If the material that is requested for reserve exceeds what might be permitted under fair use, the faculty member should seek permission from the copyright holder or the Copyright Clearance Center before the item is placed on reserve.
3. Under fair use, students may make one copy for private study or research.
4. All copied material must carry the following statement: NOTICE: This material may be protected by copyright law. (Title 17 U.S. Code).

Originals of a work may be placed on reserve without worrying about fair use guidelines since those materials are not copies.

Technology

Electronic Coursepacks & Online Course Management Software

Material that is uploaded to the college’s online course management software (e.g. Angel) must be in compliance with copyright principles.

Audio-Visual Material

The face-to-face exception to copyright does NOT apply in the online environment. So, unless permission from the copyright holder has been granted, audiovisual material (YouTube clips, mp3 files, etc.) cannot be uploaded to the course management software.

Links

Links to online resources can be used. The use of linking to online resources is encouraged.

Library Databases

Many of the library's databases and online resources provide the ability to create "permalinks." Permalinks allow one to create a link to the resource that is relatively permanent. This allows instructors the ability to link to resources that they want to use without having to upload content to the college's online course management software.

Obtaining Permission

From the Copyright Holder

To obtain permission from the copyright owner, you will need to right to the copyright owner and ask for permission. Usually, you can send the request to the publisher's permission department. Allow four to six weeks for obtaining permission. The request should contain:

1. Title, author and/or editor, and edition
2. Exact material to be used (give exact page numbers)
3. Number of copies to be made
4. Intended use of the material
5. How the material will be distributed (paper copies, PDFs with password protection)
6. Whether the material will be sold

From the Copyright Clearance Center

The CCC makes it easy to obtain permission; however, they grant permission for a fee. Please contact them at www.copyright.com .