

Towson University

Guidelines for Use of Materials Protected by Copyright

I. General Copyright Information

Copyright grants originators property rights in their creative work as a means of promoting and advancing knowledge. The copyright owner has the exclusive right to reproduce, create derivative works based on, display, perform, and distribute the copyrighted work. The original copyright owner(s) may transfer all or part of his/her/ their rights (e.g., grant permission to use the work, or part of it, in a certain way). The transfer or license must be in writing, and the copyright owner must receive something in return

A. What works are copyrightable?

To be copyrightable, a work must be original (i.e., a product of the originator's own creative labor), have some degree of creativity (the Great American Novel vs. the white pages in the telephone book), and be fixed in a tangible medium of expression from which it can be perceived, reproduced or otherwise communicated directly or with the aid of a machine or device. Electronic files, digital images, and e-mail stored on floppy disk, CD-ROM, hard drive, web servers and stored in cache are copyrightable works. Literary works; musical works (and lyrics); dramatic works (and accompanying music); pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and audiovisual works, sound recordings and architectural works are all examples of copyrightable works. Titles, names, short phrases and slogans are not copyrightable. Facts and ideas are not copyrightable, only expression. There can be layers of copyright in a work: an art history textbook is copyrightable, as is a single photograph in that book, and the painting or sculpture photographed.

A compilation or collective work (like an anthology, record album, or data base) can warrant a copyright separate from the copyright in each individual part of it because of the creativity involved in collecting, arranging, and perhaps editing individual works. Also, a collection of underlying facts, which aren't individually eligible for copyright protection, can be protected because of the creativity involved in the manner in which the facts are arranged and presented.

B. Infringement

Infringement occurs when someone distributes, sells, or uses a work in any way inconsistent with the owner's property rights. The owner can sue the infringer for damages (the actual harm incurred or, in some cases, a statutory minimum) or sue to enjoin the illicit use. Copyright infringement is also a federal crime punishable by fines and/or jail sentence if infringement is willful and for (a) financial gain/commercial advantage, or (b) retail value of infringing items over \$1,000. Financial gain includes receipt, or expectation of receipt, of anything of value, including receipt of other copyrighted works.

II. Copyright Checklist

A. Is the material you want to use copyrightable? Is it protected by copyright?

If the answer is no, you can use the work without permission.

Absence of a copyright notice does not mean the work is not copyrighted. Copyright protection for works of American origin created after December 31, 1977, is for the life of the (last surviving) author plus 70 years. Anonymous and pseudonymous American works created after

December 31, 1977, and works made for hire, are protected for 95 years from the year of first publication or 120 years from the year of creation, whichever expires first. All protection runs to the end of the calendar year. Once copyright protection has expired, the work is in the public domain, and can be used without permission.

As a rule of thumb, material which was entirely created (including footnotes, annotations, translations, etc.) and published before January 1, 1923, or which was created by the U.S. federal government, is in the public domain and can be used without permission. You should assume everything else, whether published or not, is protected. For a more exact answer as to whether a work is protected, you will need to know the answers to factual questions such as when the work was created; whether it has been published, and if so, when, and with or without copyright notice; whether the work was a work for hire; whether the author is still alive or when he/she died; if published, in what country the work was first published; whether copyright has been renewed; and whether the author was domiciled in the US or a national or domiciliary of a treaty nation.

B. Does the proposed use of a work protected by copyright fall within any statutory limitations on the copyright owner's rights?

If the answer is yes, you can use the work without permission. Some of the most pertinent limitations are described briefly below.

1. Face to face teaching exemption. Performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution is allowed in a classroom or similar place devoted to instruction. However, the exemption does not apply to a motion picture or other audiovisual work if the performance or display of individual images is given by means of a copy that was not lawfully made and if the person responsible for the performance knew or had reason to know it was not lawfully made.

2. Library use. These provisions apply to Libraries and their employees acting within the scope of their employment. All such permitted reproductions or distributions must be made without any purpose of direct or indirect commercial advantage, and the reproduction or distribution of the work must include any copyright notice that appears on the Copy being reproduced, or (if there is no such notice) must include a legend stating that the work may be protected by copyright.

For purposes of this subsection, a "Library" is a library or archive which is open to the public or available not only to researchers affiliated with the library or archives or the institution of which it is a part, but also to other persons doing research in a specialized field. For purposes of this subsection, a "Copy" is a copy or phonorecord.

a) Unpublished works. A Library can reproduce and distribute up to three Copies of an unpublished work duplicated solely for purposes of preservation and security or for deposit for research use in another Library if (i) the work being reproduced is currently in the collections of the Library and (ii) any Copy reproduced in digital format is not otherwise distributed in that format and is not made available to the public in that format outside the premises of the Library.

b) Published works. A Library can reproduce and distribute up to three Copies of a published work duplicated solely for the purpose of replacing a Copy that is damaged, deteriorating, lost or stolen, or if the existing format in which the work is stored has become obsolete, if (i) the Library has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price and (ii) any such Copy reproduced

in a digital format is not made available to the public in that format outside the premises of the Library. A format is considered obsolete if the machine or device necessary to perceive the work in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.

c) User requests. These exemptions do not apply to musical works; to pictorial or graphic works except those published as illustrations, diagrams or similar adjuncts to other works; to sculptural works; or to a motion picture or other audiovisual work other than an audiovisual work dealing with news.

1) A Library may make and distribute a copy, made from the collection of the Library where the user makes the request or from that of another Library, of no more than one article or other contribution to a copyrighted collection or periodical issue, or to a Copy of a small part of any other copyrighted work, if (i) the Copy becomes that property of the user, (ii) the Library has had no notice that the Copy would be used for any purpose other than private study, scholarship or research, and (iii) the Library displays prominently where orders are accepted, and includes on its order form, a warning of copyright in the form attached.

2) A Library may make and distribute a copy of an entire work, or a substantial portion of it, made from the collection of the Library where the user makes the request or from that of another Library, if in addition to the above requirements, the Library has first determined, on the basis of a reasonable investigation, that a Copy cannot be obtained at a fair price.

Only isolated and unrelated reproduction and distribution of a single Copy of the same material on separate occasions is permitted by this exemption. Reproduction and distribution is not permitted if the Library or its employee (i) is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple Copies of the same materials, whether made on one occasion or over a period of time, and whether intended for aggregate use by one or more individuals or for separate use by individual members of a group; or (ii) engages in the systematic reproduction or distribution of single or multiple Copies of work which cannot be obtained at a fair price. However, Libraries may participate in interlibrary arrangements as long as neither the purpose nor effect is that the Library receiving such Copies for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.

3) A Library can make an off-the-air videotape recording of network newscasts for limited distribution (only by lending, and only a limited number of copies and excerpts) to scholars and researchers for use in research purposes. This exemption does not apply to documentary, magazine-format or other public affairs broadcasts.

d) Last twenty years of copyright protection. During the last 20 years of any copyright term of a published work, a library, archives, or nonprofit educational institution may reproduce, distribute, display or perform in facsimile or digital form a copy or phonorecord of such work, or portions thereof, for purposes of preservation, scholarship, or research, if it has first determined, on the basis of a reasonable investigation, that (i) the work is not subject to normal commercial exploitation; (ii) a copy or phonorecord of the work cannot be obtained at a reasonable price, and (iii) the copyright owner or its agent has not provided notice (pursuant to regulations) that either

of the conditions above applies. This exemption does not apply to subsequent uses by users other than the library, archives, or educational institution.

e) Unsupervised copying equipment. Unsupervised copying equipment in the library must display a notice that making a copy is subject to copyright law. (The attached notice can be used.)

f) A nonprofit library can lend a computer program for nonprofit purposes, if the packaging for each copy of a computer program, which is lent, includes a warning of copyright (see attached notice).

5) Lending computer programs. The University can transfer possession of a lawfully made copy of a computer program to another nonprofit educational institution or to faculty, staff, or students unless (a) the computer program is embodied in a machine or product which cannot be copied during the ordinary operations or use of the machine or product or (b) the computer program is embodied in or used in conjunction with a limited purpose computer that is designed for playing video games and may be designed for other uses.

6) Nonprofit performance. The University can perform a nondramatic literary or musical work (not transmitted to the public) without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers. This exemption applies (a) if there is no direct or indirect admission charge for the performance; or (b) if the proceeds, after deducting the reasonable costs of producing the performance, are used exclusively for educational, religious, or charitable purposes and not for private financial gain, and if the copyright owner has not served written notice of objection to the performance. Any such notice must state the reasons for the objection, must be signed by the copyright owner or the owner's duly authorized agent and served on the person responsible for the performance at least seven days before the date of the performance, and must comply, in form, content, and manner of service, with copyright regulations.

5. Computer uses. The owner of a computer program may (a) make or authorize the making of another copy or adaptation of the program, as long as the new copy or adaptation is created as an essential step only in conjunction with a machine (i.e., installing a program on hard drive from disk); and (b) make a copy of it for archival purposes, as long as all archival copies are destroyed if the owner no longer has rightful possession of the program.

C. Does the proposed use of a work protected by copyright fall within the guidelines for classroom copying, the guidelines for educational uses of music, or the guidelines for educational multimedia (all attached)? If the answer is yes, you can use the work without permission.

D. Is the proposed use of a work protected by copyright a "fair use" even though it does not fall within the guidelines? If the answer is yes, you can use the work without permission. You should contact the University's Counsel's office for advice.

Fair use is a defense to claim of infringement. Fair use, like beauty, is in the eye of the beholder, and is rarely clear-cut one way or the other. Three fair use cases have made it to the Supreme Court: all three were overturned at each level of review, two by split decision at the Supreme Court. Whether use is fair depends on an analysis of four factors (though other factors can be considered as well):

1. The purpose and character of use (commercial or non-commercial). This analysis favors such uses as criticism, comment, news reporting, teaching, scholarship or research. Use of a copyrighted work in a derivative work is viewed more favorably than mere copying. This factor focuses on public benefit vs. private commercial gain.

2. The nature of the copyrighted work. Creative works are given more protection than factual works, and unpublished works are given more protection than works that have been published.

3. The portion of the original work that was taken or copied. This factor considered both the quantity and the relative importance of the part used.

4. The economic impact of the use on copyright holder of the original work. This is the most important factor (the tiebreaker). It considers not just the proposed use, but also the impact on the copyright holder if everyone did the same thing. It also considers whether the proposed use serves the same or a different function or niche than the original work.

E. Do you have documented permission for the use from the copyright holder? If the answer is yes, you can use the work in accordance with the scope of the permission granted.

For memos or documents written by a Towson University employee for internal distribution, or exams or syllabi written by a professor for class, permission to copy (for the purpose) is implied. For other works, the author initially has all copyrights in his/her/their work, but publishing agreements typically contain provisions assigning those rights to the publisher.

The Guidelines established here are consistent with 1976 Copyright Act, Title 17, U.S. Code, and subsequent provisions and guidelines for the educational use of copyrighted materials as published by the Library of Congress, U. S. Copyright Office, 101 Independence Avenue S.E. Washington D.C. 20559-6000

September 2001