

Reproduction of Copyrighted Works by Educators and Students

Copyright law begins with the basic premise that the creator of a particular work or product has exclusive rights to all the potential uses of that work or product. However, certain federal laws provide for exceptions to those rights. Some of the exceptions provided for are minimal whereas others provide broad opportunities to reproduce copyrighted documents and/or products.

The Intellectual Property Committee at Southwestern Oklahoma State University wants you as faculty and students to be aware of your rights to copy certain documents and, likewise, be knowledgeable as to what restrictions or limitations there may be to your copying of printed material, visual images, videos, music, computer software, Internet items and television broadcasts. The purpose of this document is not to provide you with all the answers, but rather to point you to usable web sites that can instruct you on what the law is and give you guidance, if possible.

While copyright law is governed by a number of federal acts, three primary pieces of legislation are of particular importance. These three include: The Copyright Act of 1976, The TEACH Act (Technology, Education and Copyright Harmonization Act) of 2002 and the DMCA (Digital Millennium Copyright Act). Each of these three acts reconfirms ownership of copyrighted items in the creator but provides exceptions in which copyrighted items may be reproduced, either in part or the whole, by individuals or institutions.

The most widely recognized exception to copyright protection is that of “fair use.” Fair use is a legal principle that provides certain limitations on the exclusive rights of the copyright holders. While there is no simple test to determine what fair use is, even though there has been much litigation over the term, four fair use factors can be identified which should be addressed by anyone wishing to reproduce a copyrighted item. These factors include: 1) Whether the purpose and character of the use is of a commercial nature or is for nonprofit educational purposes, 2) the nature of the copyrighted work, 3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole, and 4) the effect of the use upon the potential market for or value of the copyrighted work. If you reproduce beyond the fair use guidelines, the greater the risk that fair use is not applicable and you may have infringed upon the rights of the copyright owner. At some point, the copyright owner may decide to ask the courts for compensation for your infringement on their property rights. The safest course is always to get permission from the copyright owner before using copyrighted material.

It is incumbent on all individuals who copy any documents (or copyrighted products) to assess what right they have, if any, to reproduce and/or distribute them. When materials are misused, the copyright owner may seek damages from individuals as well as from the University. Ignoring policies or being ignorant of copyright rules may make you personally and financially responsible for some part of any damages awarded. Being familiar with the concepts of fair use and copyrights will help to mitigate not only the University’s risk but your personal risk.

The following web sites can provide you with understanding of the issues involved:

Federal Laws:

Copyright Law, United States Code, Title 17: <http://www.copyright.gov/title17/>

U.S. Copyright Office, Section 21, Reproduction of Copyrighted Works by Educators and Librarians (page 8): <http://www.copyright.gov/circs/circ21.pdf>

Digital Millennium Copyright Act: <http://www.copyright.gov/legislation/dmca.pdf>

Useful University Websites:

Brown University: <http://www.brown.edu/Administration/Copyright/>

Indiana Higher Education Telecommunications System:
<http://old.ihets.org/consortium/ipse/fdhandbook/copyrt.html>

University of Texas: <http://utsystem.edu/ogc/intellectualproperty/copypol2.htm>

Stanford University: http://fairuse.stanford.edu/primary_materials/index.html

Tufts University: <http://www.library.tufts.edu/fairuse/>

University of Maryland: <http://www.umuc.edu/library/copy.shtml>

University of Washington: <http://www.washington.edu/classroom/emc/fairuse.html>

Visual Resources Association: <http://www.vraweb.org/copyright/multimedia.html>

Other Informative Websites:

Checklist For Conducting A Fair Use Analysis Before Using Copyrighted Materials:
<http://www.swosu.edu/administration/osp/policies.asp>

Fair Use of Copyrighted Material (Power Point Presentation):
<http://www.swosu.edu/administration/osp/policies.asp>

The Association of Research Libraries: <http://www.arl.org/info/frn/copy/primer.html>

Copyright Website: <http://www.benedict.com/Info/Info.aspx>

Copyright and Fair Use Guidelines for Teachers: <http://nccei.org/blackboard/copyright.html>

Fair Use Guidelines for Educational Multimedia (as prepared by the Consortium of Colleges and University Media Centers): <http://www.adec.edu/admin/papers/fair10-17.html>

Classroom Copyright Chart: <http://mediafestival.org/copyrightchart.html>

Visual Artists Rights Act: <http://www.studiolo.org/CIP/VARA/CIP-VARA.htm#bioPF>

The SWOSU Intellectual Property Committee encourages your review of the above websites but does not guarantee the accuracy of the contents contained within those sites.