



Copyrights at _____ Southeastern Louisiana University

A Guide for Faculty, Staff & Students

Please note that the following guidelines are a best faith effort by Southeastern Louisiana University to summarize U.S. Copyright law, the provisions of the Uruguay Round Agreements Act, and U.S. case law concerning the use of copyrighted materials in the educational setting. Changes in interpretation of copyright law and copyright treaties can make it difficult to determine if the use of copyrighted materials is permissible or not; no one can be 100% certain of the law and its implications. The safest course to follow when using copyrighted materials is to get permission from the copyright owner before using the work.

November 2003
Southeastern Louisiana University



Copyrights at _____
Southeastern Louisiana University
A Guide for Faculty, Staff & Students

Table of Contents

I. Introduction	1
II. Southeastern's Copyright Policy	3
III. Southeastern's Copyright Policy Guidelines	4
A. Make a good faith attempt to determine if permission is needed ..	4
B. Document rationale for using copyrighted materials	4
C. Look for digitized reproductions	4
D. Southeastern's Copyright Guidelines Flow Chart for Determining If Permission is Needed	5
1. Is the material protected by one or more copyrights?	6
a. How do I know?	6
b. Works copyrighted before 1978	6
c. Works copyrighted between January 1, 1978 and March 1, 1989	7
d. Works copyrighted after March 1, 1989	7
e. Sound Recordings	7
f. Foreign Works	8
g. Unpublished Works	8
h. Public domain	9
i. Conclusion	9
2. Is the use one of the exclusive rights of the copyright owner?	10

3.	Is the use an exception to the exclusive rights of the copyright owner?	12
	a. Fair Use	12
	b. Educational performance and display in face-to-face teaching	14
	c. Reproduction by libraries	15
	d. Reproduction for the disabled	15
	e. Computer program backup	16
	f. Digital reproductions	16
4.	Is the use one of the common education material types or uses?	18
	a. Distance learning – performance and display	18
	b. Classroom copying and coursepacks	19
	c. Multimedia works and off-the-air recordings	21
	d. Music	24
	e. Research copies	27
	f. Reserves	27
	g. Image archives	28
	h. Computer software	29
5.	Does the use weigh in favor of the four fair use factors?	31
IV.	Good practices for using copyrighted materials	32
V.	Obtaining permission to use copyrighted works	33
	A. Determine copyright owner	33
	B. Obtain permission	33
	1. Contact the copyright owner(s)	34
	2. Organizations that grant permissions	34
	3. Sample letters	36
	C. Documentation	39
	D. What to do if you can't locate the copyright owner or you get no response	39

VI. Checklist for determining fair use	40
Appendix A – Duration of Copyright Protection	42
Appendix B – Example Scenarios Involving Copyrighted Materials	43



Copyrights at _____
Southeastern Louisiana University
A Guide for Faculty, Staff & Students

I. Introduction

Copyright protection has always been an important issue, even from the very inception of the United States when James Madison in 1787 first submitted a provision to the framers of the Constitution to protect the work of literary authors. It was May 1790 when the first copyright law was enacted, protecting only books, maps and charts. Since that time, just as the types of creative media have expanded, so has copyright protection. Today, Title 17 of the *U.S. Code*, which includes the Copyright Act of 1976 (the latest general revision of copyright law) along with a long list of amendments, protects literary works, musical works, dramatic works, pantomimes and choreographic works, pictorial, graphic and sculptural works, architectural works, motion pictures, audiovisual works and sound recordings. This protection includes unpublished as well as published works, and applies even if the work does not have a copyright notice attached to it.

In general, copyright law gives authors of “original works of authorship” the sole right to do the following, and to authorize others to do the following:

- reproduce their work,
- prepare derivative works based on their work,
- distribute copies of their work, and
- perform or display their work publicly.

Copyright protection comes into effect upon creation of the work, and with most works, the term of copyright protection (extended in 1998 with the Sonny Bono Copyright Term Extension Act), covers the life of the author plus 70 years. Works made for hire (work created as a part of employment and owned by the employer) are protected 95 years from publication or 120 years from creation, whichever is shorter. While these rights are exclusive, there are allowances in

copyright protection under the fair use statute, giving educators, as well as journalists and other researchers the ability to use copyrighted material in criticism, comment, news reporting, teaching, scholarship or research without obtaining permission or paying royalties for its use.

II. Southeastern's Copyright Policy

While Southeastern Louisiana University promotes scholarly work in an open and free atmosphere, it is the policy of Southeastern that all university faculty, staff, and students act in compliance with all applicable laws, including all applicable copyright laws. Southeastern recognizes that compliance with copyright laws can be complex, especially in understanding what constitutes fair use in the higher education setting. The addition of the TEACH Act (Technology, Education and Copyright Harmonization Act) in 2002, which deals directly with the use of copyrighted works in the educational environment and even more specifically in distance education, makes the need for a policy with clear guidelines on the use of copyrighted materials all the more essential to ensure that Southeastern is in compliance with all copyright laws. The following guidelines have been developed to enable university faculty, staff, and students to interpret and adhere to copyright laws while performing scholarly activities. It is the policy of Southeastern that all university faculty, staff and students follow these guidelines.

III. Southeastern's Copyright Policy Guidelines

A. Make a good faith attempt to determine if permission is needed

Adhering to copyright law begins with making a "good faith attempt" in determining if permission is needed. This begins with understanding the exclusive rights of copyright owners and the exceptions to those rights. [Southeastern's Copyright Guidelines Flow Chart for Determining if Permission is Needed](#), contained in this document, was developed to help university faculty, staff and students determine which laws apply to a particular work and whether its use requires permission from the copyright owner.

In some instances Southeastern may already hold a license allowing university faculty, staff and students to use a copyrighted work. Licenses do contain limitations on the use of copyrighted materials. It is important to determine if the material and its use is covered by a license agreement.

B. Document rationale for using copyrighted materials

Part of making a "good faith attempt" in determining if permission is needed for use of a particular piece of copyrighted work is documenting rationale for the decision. University faculty, staff and students should document the purpose and use of the work, if the work is still protected by copyright law, and whether or not permission should be obtained for its use.

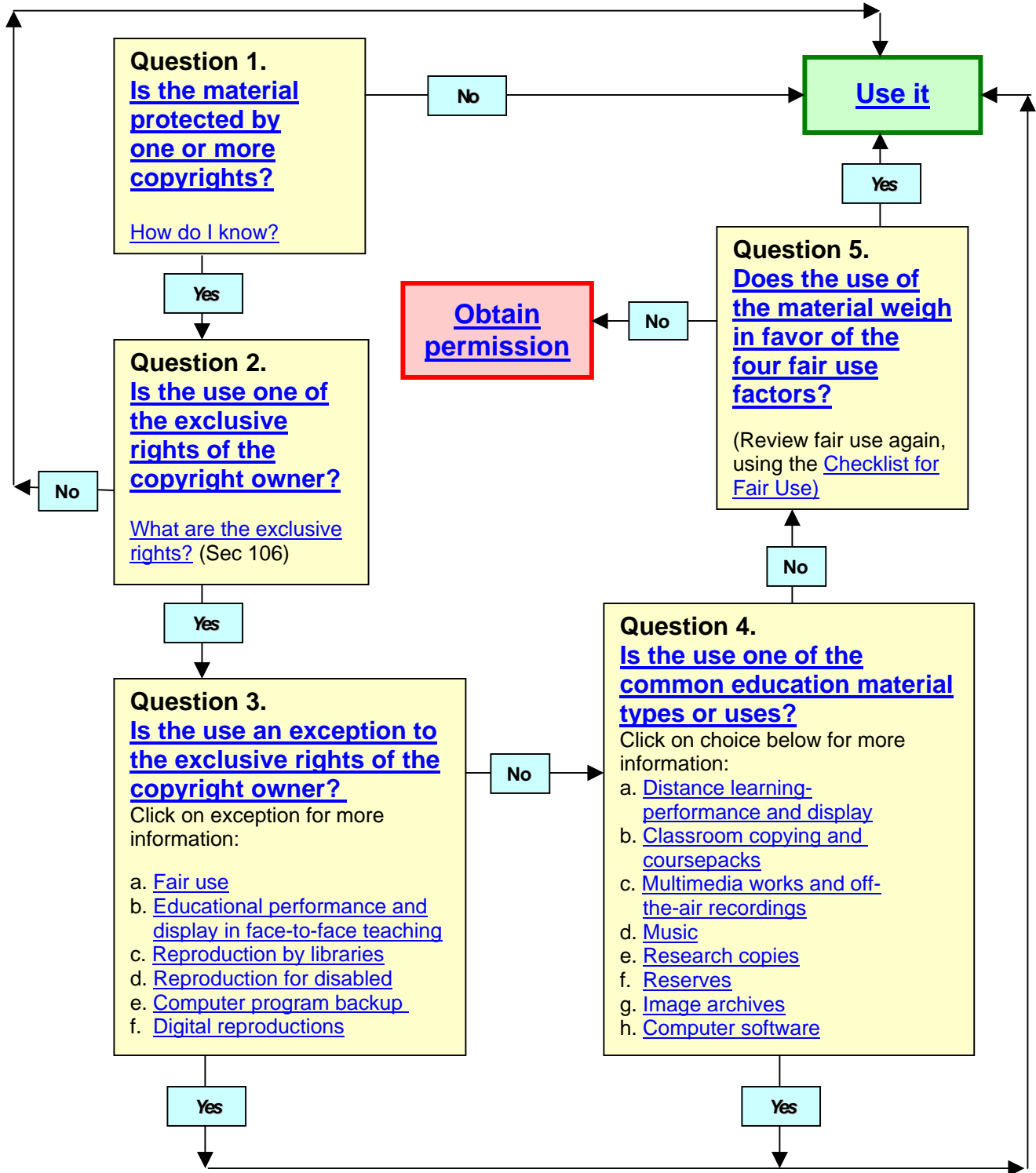
If it is determined that use of the copyrighted work is an exception to the copyright owner's rights and permission is not needed, it is recommended that the [Checklist for Fair Use](#) (contained in this document) be completed as a means for documenting rationale for the use of the work. University faculty, staff and students should also adhere to the [Good Practices for Using Copyrighted Materials](#) contained in this document.

If it is determined that permission is required, university employees and students should document all communication with the copyright owner. For more information, see [Obtaining Permission to Use Copyrighted Works](#) in this document.

C. Look for digitized reproductions

Sims Memorial Library holds licenses or has access to digital reproductions of some articles, books and software. It is always a good idea to check with the Reference Department at the library first before making copies from print or analog copies of a work.

D. Southeastern's Copyright Guidelines Flow Chart for Determining if Permission is Needed



1. Is the material protected by one or more copyrights?

a. How do I know?

Under the present copyright law, copyright protection exists for original works of authorship from the moment they are fixed in any tangible medium of expression. Authors need not register their works with the U.S. Copyright Office or give copyright notice on their published or unpublished works in order to be protected. Protection begins from the moment of the work's creation and continues for the life of the author plus seventy years. Materials such as sound recordings and videos may have multiple copyrights and multiple copyright holders. In these cases, the term of protection lasts for seventy years after the last surviving author's death.

There are several categories of materials considered *not eligible* for federal copyright protection. These, among others, include:

- *Works not fixed in a tangible form of expression.* Examples of this include choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded.
- *Titles, names, short phrases, and slogans.* This includes familiar symbols or designs, variations of typographic ornamentation, lettering, or coloring, and listings of ingredients or contents.
- *Ideas, procedures, methods, systems, processes, concepts, principles, discoveries or devices,* as distinguished from a description, explanation or illustration.
- *Works consisting entirely of information that is common property and containing no original authorship.* Examples of this are standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources.

b. Works copyrighted before 1978

Under the law in effect before 1978, copyright protection is secured either on the date a work is published with notice of copyright, or on the date of registration if the work is registered in unpublished form. All published works copyrighted before 1978 are required to bear a copyright notice at first publication, and the absence of a copyright notice indicates that the work is not protected by copyright.

Works copyrighted before 1978 are protected for a first term of 28 years from the date on which it was secured. If renewal is applied for in the twenty-eighth

year, the work generally is protected for an additional 67 years (in some cases the work does not fall under the protection of the Copyright Act of 1976 and terms for the renewal may be less than 67 years). If renewal is not filed, the work becomes public domain at the end of the initial 28 years of protection.

An exception to this applies to works copyrighted between January 1, 1964 and December 31, 1977. The Copyright Act of 1976 allows for an automatic renewal term of an additional 67 years, even if the copyright owner does not apply for the renewal. Published works during this period still must bear a copyright notice in order to be protected.

c. Works copyrighted between January 1, 1978 and March 1, 1989

Copyright notice is mandatory for works published between January 1, 1978 and March 1, 1989, but omission can be cured by registration before or within five years of publication and by adding the notice to copies published in the United States after discovery of the omission. Thus some works may contain a notice and others may not, yet still be protected.

Works copyrighted between January 1, 1978 and March 1, 1989 are protected for life of the author plus 70 years. Works made for hire are protected for 95 years from publication or 120 years from creation, whichever is shorter. Unpublished works are protected for the same duration and do not require notice to be protected.

d. Works copyrighted after March 1, 1989

After March 1, 1989 the display of a copyright notice became optional. Therefore the absence of a notice in works published on or after March 1, 1989 does not necessarily indicate that the work is in the public domain. Protection endures for the life of the author plus 70 years, or in the case of works for hire, 95 years from publication or 120 years from creation, whichever is shorter.

e. Sound Recordings

Sound recordings made before February 15, 1972 are not protected under copyright law. While the work recorded may still be protected, the recording itself is not. Sound recordings made on or after February 15, 1972 are included in copyright law and do carry copyright protection for ninety-five years. Sound recordings made after 1978 are included in the Copyright Act of 1976 and are protected for life of author plus seventy years; in the case of works for hire, the recording is protected for 95 years from publication or 120 years from creation, whichever is shorter. Copyright law also protects foreign sound recordings made before 1972, as well as after 1972. See below for more information on copyright protection of foreign works.

It is important to be aware that recordings made on or after February 15, 1972 may carry multiple copyrights (generally one for the work recorded and one for the recording, but there may be additional copyrights).

f. Foreign Works

Published foreign works are protected if the author is a national, domiciliary, or sovereign authority of a foreign nation that is party to a copyright treaty that the U.S. is also a party to. The terms of the protection are determined by the author's country. See *U.S. Copyright Office Circular 38a, International Copyright Relations of the United States* on the U.S. Copyright Office web site at <http://www.copyright.gov/circs/> for more information on the terms of protection.

Additionally, under the provisions of the Uruguay Round Agreements Act (URAA), copyright protection was automatically restored to foreign works that are still protected by copyrights in their country but had previously lost U.S. copyright protection due to noncompliance with formalities of U.S. law. This applies to all foreign works originating from countries who are:

- members of the World Trade Organization
- participants in the Berne Convention
- participants in the WIPO Copyright Treaty
- participants in the WIPO Performances and Phonograms Treaty
- participants in presidential proclamation agreements (agreements made with individual countries offering reciprocal protection for American works)

The U.S. Copyright Office maintains a list of restored works whose owners have filed their intention to enforce copyright protection. While owners of restored works are urged to notify the U.S. Copyright Office, it is not required in order for the work to be protected.

g. Unpublished Works

Unpublished works created before 1978 enjoyed protection as long as the work remained unpublished. The Copyright Act of 1976 brought unpublished works into formal protection of copyright law, eliminating this perpetual protection. Effective January 1, 2003, all unpublished works created before 1978 are protected for the life of the author plus seventy years, making all unpublished works by authors who died before January 1, 1933 public domain. If the inheritor of the unpublished work published the work before January 1, 2003, the work is protected for an additional forty-five years from the date of publication.

h. Public Domain

Works not protected by copyright are considered to be in the public domain and may be reproduced without permission. As of January 1, 2003, any work published or copyrighted prior to January 1, 1923 has expired by operation of the law and has fallen permanently into the public domain in the United States. Works by the U.S. Government are not eligible for U.S. copyright protection and are generally in the public domain.

i. Conclusion

Determining the copyright status of any work is often extremely difficult. When in doubt, it is safest to assume that a work is protected by copyright.

For more information on the duration of copyright protection in this document, please see: [Appendix A: Duration of Copyright Protection](#)

For more information on the duration of copyright protection, see:
The Expiration of Copyright Protection: Survey and Analysis of U.S. Copyright Law for Identifying the Public Domain, prepared by Kenneth D. Crews, Indiana University School of Law-Indianapolis (April 30, 2001)
<http://www.dml.indiana.edu/pdf/dml-copyright-duration-report.pdf>

For additional information on copyright status, visit the U.S. Copyright Office web site for the following Circulars:

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

Circular 1: *Copyright Basics* (U.S. Copyright Office Circular 1):

Circular 15a: *Duration of Copyright: Provisions of the Law Dealing with the Length of Copyright Protection*

Circular 15t: *Extension of Copyright Terms*

Circular 22: *How to Investigate the Copyright Status of a Work*

Circular 38a: *International Copyright Relations of the United States*

Circular 38b: *Highlights of Copyright Amendments Contained in the URAA*

[Back to Southeastern's Copyright Guidelines Flow Chart](#)

2. Is the use one of the exclusive rights of the copyright owner?

What are the exclusive rights of copyright owners?

The exclusive rights of copyright owners are outlined in Section 106 of the 1976 Copyright Act and generally give the copyright owner exclusive right to do the following, and to authorize others to do the following:

- reproduce the work in copies or phonorecords
- prepare derivative works based upon the work
- distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease or lending
- perform the work publicly in the case of literary, musical, dramatic and choreographic works, pantomimes and motion pictures and other audiovisual works
- display the work publicly 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
- perform the work publicly by means of digital audio transmission in the case of sound recordings

However, there are several exceptions to these exclusive rights that allow persons other than the copyright owner to make use of copyrighted work; some of these exceptions include fair use of the work, educational performance or display, reproduction by libraries, reproduction for the disabled and computer program backup.

Click on the links below for more information contained in this document on exceptions to the exclusive rights of copyright holders:

- [Fair Use](#)
- [Educational performance or display](#)
- [Reproduction by libraries](#)
- [Reproduction for the disabled](#)
- [Computer program backup](#)

For more information on the exclusive rights of copyright owners, please also see the following circular located on the U.S. Copyright Office web site:

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

Circular 1: *Copyright Basics*

[Back to Southeastern's Copyright Guidelines Flow Chart](#)

3. Is the use an exception to the exclusive rights of the copyright owner?

There are limitations to the exclusive rights of copyright owners, including fair use, educational performance and display, reproduction by libraries, reproduction for the disabled and computer program backup.

a. Fair Use

While Section 106 of the Copyright Act (Title 17, *U.S. Code*) identifies the exclusive rights of copyright owners, Sections 107 through 118 indicate some limits to the right of copyright owners to reproduce or to authorize others to reproduce the protected work. These sections of the Copyright Act identify purposes for which the reproduction of a particular work may be considered "fair use," including criticism, comment, news reporting, teaching, scholarship and research.

Section 107 identifies four factors to consider in determining if a particular use can be considered fair use, and permission from the copyright owner to use the work is not needed. These four factors are:

1. The purpose and character of the use, including whether such use is of 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.

It is a common misconception in educational settings that the first factor, *purpose and character of use*, alone determines whether works may be reproduced without permission under fair use. However, **all four factors** must be considered, weighed, and analyzed in determining fair use. The law itself does not provide clear or direct answers about what is considered to be fair use. It is the **responsibility of the individual** who wishes to use the copyrighted work to analyze each factor and decide whether or not the use is fair use.

Purpose and character of the use

This factor addresses why, how, and in what setting the material is to be used. Courts have favored non-profit educational uses over commercial uses. Courts also favor transformative uses, such as criticism, commentary, parody, or news reporting, where portions of copyrighted works are blended into a new work. For teaching purposes, multiple copies of some works are allowed.

Nature of the work

The nature of the work refers to the characteristics, qualities, and attributes of the work (e.g., fact, fiction, published, unpublished, etc.). Court cases

have shown that copying a news magazine article (factual) is more likely to be allowed under fair use than copying a short story or other creative work. Use of commercial audiovisual works (CDs, videotapes, DVDs, etc.) generally is less likely to be allowed under fair use than the use of printed works. The use of unpublished material is also less likely to be considered fair use than the use of published material.

Amount and substantiality of the work

Fair use in this factor is measured both quantitatively and qualitatively. There is no set number or percentage for the amount of a work that can be reproduced. Quantity must be examined relative to the length of the original work. Substantiality is a qualitative measure that relates to the essence or heart of the work. A small portion of a motion picture, for example, may contain the most creative element of the work, and therefore using or reproducing it would not be favored under fair use.

Effect of use upon the market

This factor, often the most important in the courts, examines whether the copyright owner's sales of copies of the work or permissions to copy the work will be impacted by the use or reproduction. Making one photocopy of an article may have no adverse effect on the market, but making multiple copies of the same article may affect the potential market. In court cases, the weight of this factor has been examined in light of the first three factors.

For each use of copyrighted material, it is recommended that the process of determining fair use is documented and saved for future reference. The [Checklist for Fair Use](#) (contained in this document), created by the Copyright Management Center, is derived from judicial decisions that interpret copyright law and is a convenient way of documenting determination of fair use.

As always, the safest course to follow when using copyrighted materials is to get permission from the copyright owner before using the work.

Click on the links below for more information contained in this document on the use of copyrighted materials:

- [Guidelines on Classroom Copying](#)
- [Kastenmeier Guidelines for Off-the-air, Public Broadcast and Home-use Videotapes](#)
- [Guidelines for Educational Uses of Music](#)
- [Model Policy Concerning College and University Photocopying](#)
- [Education Fair Use Guidelines for Digital Images](#)
- [Education Fair Use Guidelines for Education Multimedia](#)
- [Good Practices to Follow When Using Copyrighted Materials](#)
- [Obtaining Permission for Using Copyrighted Materials](#)

For more information on the reproduction of copyrighted works by educators and librarians, see the U.S. Copyright Office web site:

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

Circular 21: *Reproductions of Copyrighted Works by Educators and Librarians*

Also see U.S. Copyright Law Title 17,

Chapter 1: *Subject Matter and Scope of Copyright*

<http://www.copyright.gov/title17/>

[Back to Southeastern's Copyright Guidelines Flow Chart](#)

b. Educational performance and display in face-to-face teaching

Section 110 of the Copyright Act allows for the performance or display of copyrighted work if it is shown:

- in the course of face-to-face teaching activities
- by an instructor or student
- in a classroom or similar place devoted to teaching activities

Included in the exception is the display or performance of:

- non-dramatic literary works
- non-dramatic musical works
- any other work, including dramatic and audiovisual works in "reasonable and limited portions"

The copies of motion pictures, music, individual images, poetry readings or audiovisual works that are displayed or performed must be lawfully made and acquired.

Recent legislation, specifically the TEACH Act, replaced Section 110.2, clarifying the conditions under which the performance or display is permissible in distance learning. For more information on the TEACH Act and performance and display in distance learning see [Distance Learning – Performance and Display](#) in this document.

For more information on Section 110 of the Copyright Act, see the U.S.

Copyright Office web site at:

<http://www.copyright.gov/title17/>

Chapter 1: *Subject Matter and Scope of Copyright*

[Back to Southeastern's Copyright Guidelines Flow Chart](#)

c. Reproduction by libraries

Libraries, within certain limitations and conditions, may make copies for specific purposes such as:

- interlibrary loan
- preservation
- reserves
- private study

A notice of copyright must be attached to all copies as it appears on the original. There are some limits to the types of materials that libraries may copy, including musical works, graphic or pictorial works, and motion pictures or audiovisual works.

For more information contained in this document, see:

- [Including Copyright Notice](#)
- [More on Reserve Copies](#)

For more information on Section 108 of the Copyright Act, see the U.S.

Copyright Office web site at:

<http://www.copyright.gov/title17/>

Chapter 1: *Subject Matter and Scope of Copyright*

[Back to Southeastern's Copyright Guidelines Flow Chart](#)

d. Reproduction for the disabled

Nonprofit organizations or governmental agencies that provide training, education, adaptive reading or information access to persons with disabilities may reproduce or distribute copies of a previously published, non-dramatic literary work if the copies are reproduced or distributed in specialized formats exclusively for use by blind persons or other persons with disabilities. The reproduction must contain a copyright notice identifying the copyright owner and date of original publication, and a notice that reproduction of the work other than in the specialized format is an infringement of copyright law.

For more information contained in this document see:

- [Good Practices to Follow When Using Copyrighted Materials](#)
- [Obtaining Permission for Using Copyrighted Materials](#)

For more information on Section 121 of the Copyright Act, see the U.S.

Copyright Office web site at:

<http://www.copyright.gov/title17/>

Chapter 1: *Subject Matter and Scope of Copyright*

[Back to Southeastern's Copyright Guidelines Flow Chart](#)

e. Computer program backup

Commercial computer software, not listed as freeware or shareware, is protected against unauthorized copying and use by copyright law and other intellectual property laws and treaties. These laws and treaties grant the author, typically the publisher of the program, a number of exclusive rights, most importantly the right to make copies of the software. Software is copied when it is installed on the hard disk of a computer or when it is loaded in the computer's memory. Copying software without the permission of the author is "copyright infringement," for which the law imposes penalties.

In addition to copyrights, computer software programs may have licenses or contracts that govern their use. Separate permissions or negotiations with the licensee may be required.

The license agreement governs use of the software and may be found in several different locations, depending on the product. The three most common locations for the license agreement are:

- printed on a separate piece of paper that accompanies the product
- printed in the User's Manual
- located online within the software product.

The license agreement contains information regarding backup copies of the software. In most instances, license agreements allow for one personal backup copy of software, to be used only if the original is damaged.

For more information on the Digital Millennium Copyright Act, see the U.S. Copyright Office web site at:

U.S. Copyright Office Digital Millennium Copyright Act of 1998
<http://www.copyright.gov/legislation/dmca.pdf>

For more information on the Uniform Computer Information Transactions Act, see UCITA Online at: <http://www.ucitaonline.com>

[Back to Southeastern's Copyright Guidelines Flow Chart](#)

f. Digital Reproductions

Section 112 of the Copyright Act addresses ephemeral recordings (short-lived reproductions). Under this exception educators may retain copies of digital transmissions that include copyrighted materials provided that no further copies are made from those works and the copies are used "solely" for transmissions as described in the [Distance Learning Performance and Display](#) section of this guide.

Section 112 does not allow making digital copies of complete print or analog materials. However, limited portions of print or analog materials, as described in the [Distance Learning Performance and Display](#) section of this document, can

be converted to digital versions if no digital version is available to the institution or if the technological protection measures of the available digital version prevent its use.

For more information about digital reproductions contained in this document see: [Digital Reproductions Available at Southeastern](#)

For more information on Section 112 of the Copyright Act see the U.S. Copyright Office web site at:

<http://www.copyright.gov/title17/>

Chapter 1: *Subject Matter and Scope of Copyright*

[Back to Southeastern's Copyright Guidelines Flow Chart](#)

4. Is the use one of the common education material types or uses?

a. Distance learning – performance and display

The TEACH Act, Section 110(2), allows educators to use clips of audiovisual works and dramatic musical works in reasonable and limited portions in online learning. Prior to the TEACH Act, instructors could not legally incorporate these works into an online class, even though they were allowed to use them in face-to-face teaching situations.

The TEACH Act provides an exception for the performance and display of copyrighted work in distance education if:

- the work is provided at the direction of the teacher, is directly related to and of material assistance to teaching the content of the lesson, and the class is part of the regular offerings of the university
- a notice that the work is protected by copyright is posted
- the work is available only to enrolled students for a period of time that is relevant to the context of a class session, and the work is stored in a secured place to prevent transmission to anyone other than enrolled students
- technology is employed that reasonably limits a student's ability to retain or further distribute the work
- the work is of the proper amount and type as the law authorizes:
 - entire performances of non-dramatic literary and musical works.
 - reasonable and limited parts of dramatic literary, musical, or audiovisual works.
 - display of other works, such as images, in amounts similar to typical displays in face-to-face teaching.
- teachers do not make any more copies than the one needed for transmission. Before digitizing analog originals, the teacher:
 - copies only the amount authorized to transmit
 - ensures there is no digital copy of the work available except a copy with technological protections that prevents use for the class as the law authorizes.

This exception *does not* include a performance or display of:

- material that is not lawfully made and acquired, and the teacher or institution knew or had reason to believe that it was not lawfully made and acquired.
- materials specifically marketed for classroom use for digital distance education.
- textbooks, coursepacks, electronic reserves and similar materials typically purchased by students for independent review outside the classroom or class session.

Instructors may not provide software online for student's use in distance education without the expressed permission of the copyright owner.

For more information on the TEACH Act see the U.S. Copyright Office web site at:

<http://www.copyright.gov/legislation/pl107-273.html#13301>

For more information on Section 110 of the Copyright Act see:

<http://www.copyright.gov/title17/>

Chapter 1: *Subject Matter and Scope of Copyright*

b. Classroom copying and coursepacks

In 1976, *Guidelines for Classroom Copying in Not-for-Profit Educational Institutions with Respect to Books and Periodicals* (located on the U.S. Copyright Office web site at: <http://www.copyright.gov/circs/>, Circular 21: *Reproductions of Copyrighted Works by Educators and Librarians*), representing agreements between authors, educators, and publishers, were congressionally endorsed in H.R. 2223. These guidelines provide minimum standards for educational fair use of books and articles only. For more information on music and audiovisual works, see [music](#) and [multimedia works](#) in this document.

The guidelines permit educators to reproduce:

- single copies of:
 - a chapter from a book
 - an article from a periodical or newspaper
 - a short story, short essay or short poem, whether or not it is from a collective work
 - a chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper
- multiple copies for classroom use if:
 - the copy is limited to no more than one copy per student in a course
 - the copying meets the test of [brevity](#) *and*
 - the copying meets the test of [spontaneity](#) *and*
 - meets the [cumulative effect](#) *and*
 - each copy includes [notice of copyright](#)

The guidelines prohibit educators from:

- copying to replace or substitute for anthologies, compilations or collective works, *e.g.* coursepacks
- copying of or from works intended to be “consumable” in the course of study or of teaching, *e.g.* workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material
- copying that substitutes for the purchase of books, publisher’s reprints or periodicals
- copying of the same item by the same teacher repeatedly from term to term

In addition, the *Guidelines for Classroom Copying in Not-for-Profit Educational Institutions with Respect to Books and Periodicals* provides guiding principles for meeting the test of brevity, spontaneity and cumulative effect as follows:

Brevity

- Poetry
 - A complete poem if less than 250 words and if printed on not more than two pages or
 - An excerpt of not more than 250 words from a longer poem
- Prose
 - Either a complete article, story or essay of less than 2,500 words or
 - An excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.

Each of the numerical limits stated above may be expanded to permit completion of an unfinished line of a poem or of an unfinished prose paragraph.

- Illustration
 - One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.
- "Special" works

Certain works in poetry, prose, or in "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Not including poetry as described above, "special" works may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof may be reproduced.

Spontaneity

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

Cumulative Effect

- The copying of the material is for only one course in the school in which the copies are made.
- Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.
- There shall not be more than nine instances of such multiple copying for one course during the class term.

The limitations stated above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.

For more information contained in this document:

[Good Practices to Follow When Using Copyrighted Materials](#)

[Back to Southeastern's Copyright Guidelines Flow Chart](#)

c. Multimedia works and off-the-air recordings

Proposed *Fair Use Guidelines for Educational Multimedia* were developed at the Conference on Fair Use (CONFU) in 1996. Although these guidelines are not law and were not universally endorsed, they do provide some guidance for educators and researchers at educational institutions. The guidelines only allow for creating unique multimedia works, and not multiple copies of the works.

Educational multimedia projects addressed in these guidelines are defined as works that:

- incorporate students' or educators' original material, such as course notes or commentary, *together with*
- various portions of copyrighted media formats which are lawfully acquired but not limited to motion media, music, text material, graphics, illustrations, photographs and digital software which are combined into an integrated presentation.

Educators may perform and display their own educational multimedia projects created for curriculum-based instruction to students in the following situations:

- face-to-face instruction,
- assignment to students for directed self-study,
- for remote instruction to students enrolled in curriculum-based courses and located at remote sites

If a network or technology is used to access the projects, technological measures should be taken to prevent duplication and to limit access.

Educators may also perform or display their multimedia projects at workshops and conferences and retain the materials for personal portfolios.

The *Fair Use Guidelines for Educational Multimedia* include some time, portion, and format (motion media, text, music, lyrics, and music video, illustrations, photographs, and numerical data sets) limitations, and should be consulted for further information. The *Fair Use Guidelines for Educational Multimedia* is contained in the *Final Report to the Commissioner at the Conclusion of the Fair Use Conference*, November 1998:

<http://www.uspto.gov/web/offices/dcom/olia/confu/confurep.htm>

While the guidelines below may be useful in adhering to copyright laws, it is best to check with the copyright holder before using multimedia works in the classroom to be sure how copyright applies to the work and what allotments are permitted. See [Obtaining Permission for Use of Copyrighted Works](#) in this document for more information.

Audiovisual works

"Audiovisual works" as defined in copyright law, are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines, or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.

Section 110 of the Copyright Act allows the use of copyrighted audiovisual materials:

- in the course of face-to-face teaching activities.
- by an instructor or student.
- in a classroom or similar place devoted to teaching activities.

You may not use audiovisual materials when it is:

- used for entertainment or recreational purposes and unrelated to a teaching activity.
- transmitted by radio or television from an outside location (such as closed circuit from another building).
- shown to an audience other than students or instructors, even when students or instructors are present.
- illegally acquired or duplicated.

A fair use blanket permission does not apply to audiovisual elements (See Section 106 & 106A of the Copyright Act, Chapter 1: *Subject Matter and Scope of Copyright* on the U.S. Copyright Office web site at: <http://www.copyright.gov/title17/>). Instructors who wish to use audiovisual materials must make sure that the items shown are obtained legally and are being used within any time limits or portion limits set by the copyright holder.

While the instructor is allowed to make a copy of audiovisual materials for display or performance in the classroom setting, the instructor may not keep a personal copy of the material, nor make an additional copy for a student. The law only allows for personal copies of *personally purchased* audiovisual items, for personal use only. Long-term copies of audiovisual items may only be kept by libraries and resource centers. (For more information see Section 108 of the Copyright Act, Chapter 1: *Subject Matter and Scope of Copyright*, on the U.S. Copyright Office website at: <http://www.copyright.gov/title17/>).

Use of audiovisual material in distance education

As long as the guidelines above for use of audiovisual materials are met, distance education classes may display audiovisual materials. The one additional caveat is that a teacher using audiovisual materials in a distance environment must make a reasonable effort to disallow student copying of the material. This may include password protecting the distance education class pages and setting up login systems for students taking the course. See [Distance Learning – Performance and Display](#) in this document for more information on use of copyrighted works in distance education.

Videotaping and off-the-air recording

The use of videotape for classroom instruction is allowed as long as the work is presented:

- in the course of face-to-face teaching activities,
- by an instructor or student,
- in a classroom or similar place devoted to teaching activities.

Knowing that copyright law is rather noncommittal on which videotapes are allowed and which are not, in 1979 Congressman Robert Kastenmeier created a series of guidelines, sometimes referred to as the "10/45 rules," for using "off-the-air," "public broadcast," and "For Home Use Only" videotapes for educational purposes. Essentially, the 10/45 rules state that:

- videotapes may be kept for up to 45 days after the recording date.
- videotapes may be shown to students only during the first 10 days after the recording date; it may be repeated once for reinforcement.
- recordings must contain a notice of copyright as broadcast.
- off-the-air recordings may be made at the request of an instructor, and only one copy can be made per instructor. Recordings cannot be made in anticipation of an instructor's request.
- duplicate copies can be made if several instructors request the same recording.
- after the first 10 days allowed for showing, recordings can only be used for evaluation purposes.
- recordings cannot be edited or combined with other works.

Instructors may use audiovisual materials aired on The Southeastern Channel as long as the above guidelines are followed *and* the instructor notifies The Southeastern Channel. Instructors are asked to identify what material is being used and how the material is being used in classroom instruction for documentation purposes by The Southeastern Channel.

Kastenmeier's Guidelines are contained in the Copyright Information Binder on Reserve in Sims Memorial Library.

Additional information on Kastenmeier's Guidelines can be found at the U.S. Copyright Office web site in Circular 21: *Reproductions of Copyrighted Works by Educators and Librarians*
<http://www.copyright.gov/circs/>

Public broadcast programs

Public Broadcasting Service, Public Television Library, Great Plains National Instructional Television Library, and Agency for Instructional Television allow educators to videotape their programs off-the-air under these conditions:

- The recording is made by students or instructors in accredited, nonprofit educational institutions.
- The recording may be used only for instruction in a classroom, lab, or auditorium. (Not restricted to one classroom or instructor)

- The recording is not shared outside of the school.
- The recording may be used as often as needed for seven days and must then be erased.

Instructors may use public broadcast programs aired on The Southeastern Channel as long as the above guidelines are followed *and* the instructor notifies The Southeastern Channel. Instructors are asked to identify what material is being used and how the material is being used in classroom instruction for documentation purposes by The Southeastern Channel.

“For home-use only” videotapes

Rented videotapes often carry the warning “FOR HOME USE ONLY,” which raises the question of whether the rented videotapes may be used in the classroom. If the videotape has been cleared for public performance, there is no problem using it in the classroom.

The gray area revolves around whether a classroom is a public place. The debate over this question will continue until a court case resolves it. In the meantime, a review of literature indicates that an instructor could show home-use-only videotapes in a classroom with the reasoning that educators have the right to display or perform works in face-to-face teaching situations, as long as the video tape meets an instructional goal and is not entertainment for the students.

Companies that have come about following Kastenmeier’s Guidelines have started using certain coding to state the level of permission allowed for videotape display. The following list of codes are being used by “Cable in the Classroom” and other videotape services:

- FREE: Unrestricted use of tape for educational uses.
- 3 YR.: Show within 3 years.
- YEAR: Show within one year.
- SEM: Show during the semester in which the program was taped.
- FAIR: Fair Use: Show within 10 days; tape may be saved for 45 days.
- WEEK: Show within seven days.
- RES: Restricted: May be taped for home use only. Tapes may not be replayed publicly in school.
- NA: Information not available at press time.

In all cases, if there is any doubt regarding copyright permissions, contact the videotape copyright holder for clarification. See [Obtaining Permission for Use of Copyrighted Works](#) in this document for more information.

[Back to Southeastern’s Copyright Guidelines Flow Chart](#)

d. Music

The *Guidelines for Educational Uses of Music* (which can be found at the U.S. Copyright Office web site in Circular 21: *Reproductions of Copyrighted Works by Educators and Librarians*, <http://www.copyright.gov/circs/>) are not a part of Copyright Law, but are helpful in determining when copying of music is allowed. These guidelines, also contained in the Copyright Information Binder on Reserve in Sims Memorial Library, are as follows:

Sheet music and recordings

- *Sheet Music Copying for Performance* – emergency copying is allowed only if the purchased copies are not available for an imminent performance. The photocopies must then be destroyed.
- *Sheet Music Copying for Academic Purposes* – single or multiple copies of excerpts may be made if less than 10% of the whole work is copied and if it is not a performable unit such as a selection, movement, or aria. The number of copies shall not exceed one copy per pupil.
- Purchased music may be edited if the fundamental character of the work is not distorted or the lyrics altered or added if none exist.
- A single copy of an entire performable unit can be made if it is out of print or unavailable except in a larger work. It cannot be used for performance.
- A single copy of a sound recording owned by the university or instructor may be made for aural exercises or tests, and may be retained by the university or faculty member. (This pertains to the copyright of the music itself and not to any copyright that may exist in the sound recording.)
- A single copy of a student performance may be made for study and for the archives.

Sheet music copying that is prohibited

- You cannot copy to create, replace, or substitute for anthologies, compilations, or collective works.
- You cannot copy to avoid purchase.
- You cannot copy without the inclusion of the copyright notice.

Music recording for educational usage

Portions of a copyrighted musical composition may be reproduced, performed or displayed if it is:

- in the course of face-to-face teaching activities,
- by an instructor or student,
- in a classroom or similar place devoted to teaching activities,
- limited to portions that do not include the essence of the piece in its entirety.

Instructors who wish to use musical compositions must make sure that the items reproduced, performed or displayed are obtained legally. While the

instructor is allowed to make a copy of musical materials for display or performance in the classroom setting, the instructor may not keep a personal copy of the material, nor make an additional copy for a student. The law only allows for personal copies of *personally purchased* music items, for personal use only.

Music recording for usage in distance education

As long as the work is provided under the direction of a teacher, is directly related to the teaching content of the lesson and presented in limited portions that do not include the essence of the piece in its entirety, distance education classes may use music recordings. The one additional caveat is that teachers using music recordings in a distance environment must make a reasonable effort to disallow student copying of the material. This may include password protecting the distance education class pages and setting up login systems for students taking the course. See [Distance Learning – Performance and Display](#) in this document for more information on use of copyrighted works in distance education.

Copying and distribution of recorded music

Making a full-length copy of a purchased piece of music for any reason other than personal use, including classroom use, is strictly forbidden by the Copyright Act of 1996, Chapter 10: *Digital Audio Recording Devices and Media*. This chapter is also known as the Audio Home Recording Act of 1992. (Full text is available at: [http://www.copyright.gov/title17/.](http://www.copyright.gov/title17/))

The act further prohibits any distribution of copyrighted music. All copies made of a purchased piece of music must be for private use, except for small portions (as noted above), which are allowed for classroom use under the fair use exception.

Posting of full-length music copies on Internet sites, including distance-learning classes, is prohibited. Distance education classes, again under the TEACH Act, may use snippets of a song as long as it is related to a teaching activity, it does not include the essence of the piece in its entirety, only those students enrolled in the class have access to the material, and the instructor has made reasonable effort to prevent students from copying the material. See [Distance Learning – Performance and Display](#) in this document for more information on use of copyrighted works in distance education.

Music Performances

Southeastern holds ASCAP, BMI and SESAC license agreements allowing for music performances of copyrighted musical compositions. The licenses are limited to non-dramatic performances and do not include concert performances of any "dramatico-musical work" (compositions that are a part of a musical comedy, opera, play with music, revue or ballet). Included in the agreement are performances by means of the University Internet, University radio broadcasting station and the University closed circuit and cable television system. In addition, The Southeastern Channel has its own music library purchased through a publishing house. Music performances are reported by The Southeastern Channel, KSLU and by the Department of Music and Dramatic

Arts to the appropriate licensing agencies as outlined by the license agreement. For more information on reporting requirements and music performances covered by the licensing agreements, please review the license agreements located in the Office of the Vice President for Administration and Finance. Permissions for dramatic performances must be individually negotiated.

Additional information on the use of copyrighted music in the educational setting can be found at the U.S. Copyright Office in Circular 21: *Reproductions of Copyrighted Works by Educators and Librarians*:

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

[Back to Southeastern's Copyright Guidelines Flow Chart](#)

e. Research copies

The *Model Policy Concerning College and University Photocopying for Classroom, Research and Library Reserve* (1978), located at <http://www.ifla.org/documents/libraries/policies/ala.txt>, was developed by the American Library Association, and includes guidance for librarians, faculty and administrators for copying for scholarly research or use in teaching or preparing to teach a class. At the very least, instructors may make a single copy of any of the following:

- a chapter from a book,
- an article from a periodical or newspaper,
- a short story, short essay, or short poem, whether or not from a collective work,
- a chart, diagram, graph, drawing, cartoon or picture from a book, periodical or newspaper.

For more information contained in this document, see:

[Good Practices to Follow When Using Copyrighted Materials](#)

[Back to Southeastern's Copyright Guidelines Flow Chart](#)

f. Reserves

The Sims Memorial Library, at the request of a faculty member, may place on reserve for student use photocopies or electronic copies of excerpts from copyrighted works in the Library's collection or works personally owned by a faculty member. This reserve functions as formal classroom distribution of copyrighted materials or reflects an individual student's right to photocopy for personal scholastic use, as provided by the fair use exception to copyrights.

All copies placed on reserve must meet fair use requirements of the U.S. Copyright Act, guidelines provided in the *Model Policy Concerning College and*

University for Classroom, Research and Library Reserve Use (located at <http://www.ifla.org/documents/libraries/policies/ala.txt>) published by the American Library Association, and the *Fair-Use Guidelines for Electronic Reserve Systems* contained in the *Final Report to the Commissioner at the Conclusion of the Fair Use Conference*, November 1998, (located at <http://www.uspto.gov/web/offices/dcom/olia/confu/confurep.htm>).

For more information on Faculty Reserve Guidelines at Southeastern, see: <http://www.selu.edu/Library/ServicesDept/circ/reserve.htm>

For more information contained in this document see: [Good Practices to Follow When Using Copyrighted Materials](#)

[Back to Southeastern's Copyright Guidelines Flow Chart](#)

g. Image archives

"Image archives" is defined as a collection of images of art, architecture, photographs, slides, graphics or other reproductions in texts. These may be collected from a variety of formats and reproduced digitally on various media, e.g. CD-ROMS, web sites, etc. Guidelines for the collection and use of digital images by educational institutions, educators, scholars, and students were developed and proposed at the CONFU conference in 1996. While the *Educational Fair Use Guidelines for Digital Images* (located in the *Final Report to the Commissioner at the Conclusion of the Fair Use Conference*, November 1998, at <http://www.uspto.gov/web/offices/dcom/olia/confu/confurep.htm>) are not law and were not universally endorsed, they do provide some guidance for educators and researchers at educational institutions on the collection and use of digital images.

Under these guidelines educators may:

- display digital images for educational purposes, including: face-to-face teaching of curriculum-based courses, and research and scholarly activities at a non-profit educational institution.
- compile digital images for display on the institution's secure electronic network to students enrolled in a course given by that educator for classroom use, after-class review, or directed study, during the semester or term in which the educator's related course is given.
- use or display digital images in connection with lectures or presentations in their fields, including uses at non-commercial professional development seminars, workshops, and conferences where educators meet to discuss issues relevant to their disciplines or present works they created for educational purposes in the course of research, study, or teaching.

The guidelines do not cover reproducing and publishing images in publications, including scholarly publications in print or digital form, for which permission is generally required.

Some specific additional guidelines for students included in the *Educational Fair Use Guidelines for Digital Images* (located at:

<http://www.uspto.gov/web/offices/dcom/olia/confu/confurep.htm>)

allow students to:

- use digital images in course assignment work and fulfillment of degree requirements.
- publicly display academic work incorporating digital images in courses in which they are registered and in formal critiques by nonprofit educational institutions.
- retain academic work in a personal portfolio for later use such as graduate school or employment applications.

The guidelines also indicate that educational institutions should simultaneously conduct the process of seeking permission to retain and use the images when creating digital images from analog sources, print, slide, photographs, and so on. Educators, researchers and students should first check with the Library for images in digital format, as the University may already hold a license and have the image available in digital format. The guidelines only allow digitizing images without permission if:

- it would be unreasonable to expect a timely reply to a request for permission.
- images digitized for spontaneous use do not automatically become part of the institution's image collection.
- permission is sought for any reuse of such digitized images or their addition to the institution's image collection.

[Back to Southeastern's Copyright Guidelines Flow Chart](#)

h. Computer software

Commercial computer software listed as freeware or shareware can be copied, but cannot be altered. Commercial computer software not listed as freeware or shareware is protected against unauthorized copying and use by copyright law and other intellectual property laws and treaties. These laws and treaties grant the author, typically the publisher of the program, a number of exclusive rights, most importantly the right to make copies of the software. **Software is copied when it is installed on the hard disk of a computer or when it is loaded in the computer's memory.** Copying software without the permission of the author is "copyright infringement," for which the law imposes penalties.

Software piracy is the unauthorized copying, reproduction, use, or manufacture of software product(s). Academic product misuse occurs when software manufactured, licensed, and specifically marked for distribution to educational institutions and students at reduced prices is diverted into normal commercial channels of distribution. Typically academic software products will contain a sticker indicating that it is for use only by educational institutions. Educational

institutions that purchase software products must follow all license agreement rules.

The license agreement may be found in one of several different locations, depending on the product. The three most common locations for the license agreement are:

- printed on a separate piece of paper that accompanies the product;
- printed in the User's Manual; or
- located online within the software product.

The license agreement also contains information regarding backup copies of software.

License agreements may be included in on-line or hard copy form. In addition, hard-copy license agreements are usually distributed. The primary user of the computer on which the software product is installed may usually make a second copy for his or her exclusive use on a portable computer. If the license agreement does not contain this provision, then one may not make a second copy of the software. The "primary user" is the individual using the computer most of the time it is in use. Only that individual is entitled to use the second copy. Further, the software must be installed on the local hard drive of his or her computer; one is not entitled to make and use a second copy on his or her portable computer if he or she runs the primary copy of the software from a network server. Finally, only one secondary copy may be made; an individual may not install this copy on more than one portable computer.

Other than products acquired under a special licensing program, most legally licensed products contain a hard copy license agreement, which is the primary proof of legally acquired product. It is strongly recommended that license cards are retained for every copy of each product that comes with a hard copy license agreement. For copies of software products that contain on-line license agreements, the sales receipt demonstrating that license purchase should be retained. It is also recommend that the original user's manual, the product disks and certificate are kept.

[Back to Southeastern's Copyright Guidelines Flow Chart](#)

5. Does the use of the material weigh in favor of the four fair use factors?

After following the flowchart contained in this document, faculty, staff and students should have a greater understanding of the application and use of exceptions in copyright law allowed educators and librarians. By reviewing fair use again, a more informed, good-faith decision on using copyrighted materials may be made. A second review of fair use may also be necessary when the educational guidelines do not fully address a specific use. Using the [Checklist for Fair Use](#) contained in this document, determine if your use of the copyrighted material balances in favor of fair use. You may wish to review the section on [Fair Use](#) again while completing the checklist.

For more information contained in this document on using copyrighted materials, see

- [Good Practices for Using Copyrighted Materials](#)
- [Obtaining Permission for Using Copyrighted Materials](#)

For more information on copyright law and fair use, see the U.S. Copyright Office web site at:

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

Circular 21: Reproductions of Copyrighted Works by Educators and Librarians

IV. Good Practices for Using Copyrighted Materials

If you determine that your use of copyrighted material meets the criteria as an exception to copyright protection, there are good practices to follow to further ensure you are complying with copyright law. Use of copyrighted materials should:

- ***Include attributions***

Identify the source of the copyrighted material being used with a bibliographic citation. The bibliographic citation should contain the author, title, page number and any other identifying information that is pertinent to locating the material being used.

- ***Include copyright notice***

A copyright notice is an identifier placed on copies of the work informing the public that the work is protected by copyright. The copyright notice generally consists of the © symbol or the word “copyright” with the year of first publication and the name of the copyright owner, for example:

© 2003 John Doe.

While use of a copyright notice was once required as a condition of copyright protection, it is now optional. If the copyright notice is present on the work, copies should include the formal copyright notice as shown on the original work. If no notice is shown on the original, then the copies should at least state: “This material may be protected by copyright.”

- ***Be done sparingly***

Remember, there are limits in the amount and substantiality of the portion being used under fair use, as well as the length of time the copyrighted material is used. You should always obtain permission for any copyrighted materials used repeatedly.

- ***Be limited to the students in the class***

Copies or access to the material should be limited to only those students in the class, and only one copy per student.

As always, if you are in doubt, ask the copyright owner for permission to use the work. See [Obtaining Permission for Use of Copyrighted Works](#) in this document for more information.

V. Obtaining Permission to Use Copyrighted Works

If you have determined that a work you would like to use is copyrighted or licensed and does not fall under one of the educational fair uses or is not a statutory exception, you should seek permission from the copyright owner(s) or licensees to use the work. To do this, you will need to determine the identity of the copyright owner(s), contact the owner to obtain permission, and keep detailed documentation of your communications.

A. Determine copyright owner(s)

Examine the work you wish to use for a copyright notice. This information usually will be located on the title page or the verso of the title page in books or journal articles. In some cases, the copyright notice for will be present on the article itself. The copyright notice on computer disks, sound recordings, audiovisual works, videos, DVDs, tapes, etc. can be found on the label, container, title frames or informational materials included with the item. Be aware that audiovisual works, musical works, and computer disks sometimes have multiple copyright owners for the text, lyrics, music, production, and so on, and multiple permissions may be required to use the work.

If you are not able to locate the copyright notice, do not assume that the material is not copyrighted. There are a number of organizations and websites that you can search for information about copyright owners. The largest is the United States Copyright Office (located at <http://www.copyright.gov/>). In addition to searching the copyright databases and catalogs at their website, you can request that the Copyright Office search copyright ownership for you. Detailed information about investigating the copyright status of a work is available at the Copyright Office web site.

Depending on material type, there are also a number of other organizations that can assist in finding information on copyright owners or information on the transfer of copyrights. ([Click here for a listing contained in this document.](#)) In addition, information about copyright owners can be found at publishers' websites.

B. Obtain Permission

Once you have determined the current copyright owner, you can either contact the owner directly or secure permission through one of a number of organizations that grant permissions on behalf of the copyright owner. Either way, before initiating contact, it is a good idea to collect some information first, including:

- general bibliographic information, *i.e.* author, publisher, pages;
- the amount material to be used, *i.e.* pages 4-10, one chapter, 30-sec. Excerpt of a symphony;
- the time length during which the materials will be used, *i.e.* the entire semester, two weeks, three consecutive semesters;
- the number of students in the class;

- the purpose or nature of the use, *i.e.* classroom, publication poster, presentation at conference, student recital;
- where and how it will be used, *i.e.* classroom, password-protected Blackboard class, electronic reserves, graphic in a PowerPoint slide.

1. Contact the Copyright Owner(s)

Copyright owners are often willing to give permission to use their works in educational settings. However, you must state very clearly how, why, when, and how long the work will be used, the purpose of the use, and the amount that you will be using. It is best to get the permission and conditions of the permission in writing. A phone call may get a quick response, but you should follow up with an e-mail, fax, or letter, which clearly describes your use of the copyrighted material. Copyright owners and publishers may prefer their own form or method of communication. Check the owner's web site for their preferred method of permission.

2. Organizations that Grant Permissions

Sometimes the most efficient way of obtaining permission is through organizations and associations that can identify and grant permission. The largest and most established permission-granting organization is the Copyright Clearance Center (located at <http://www.copyright.com/>). Through this online service you can obtain permission to use a variety of material types for research, distance learning, classroom handouts, coursepacks, reserve, and web pages.

The following is a list of links of organizations and associations you may find helpful in searching for copyright and license owners to request permission to use copyrighted or licensed works. Some of the websites also include additional general information about using copyrighted materials.

- **Books and Journals**
 - Copyright Clearance Center (permissions)
<http://www.copyright.com>
 - Access Copyright (Canada) (search and permission)
<http://www.accesscopyright.ca/>
 - Authors Registry (U.K.) (search and permissions)
<http://www.authorsregistry.org/welcome.html>
 - Library of Congress Copyright Office
<http://www.copyright.gov>
 - Poets & Writers (search)
<http://www.pw.org/directry.htm>
- **Motion Pictures, Videos and Television**
 - Criterion Pictures (Canada) (search and permissions)
<http://www.criterionpic.com/>
 - Internet Movie Databases (search)

- <http://imdb.com/>
Library of Congress Motion Picture and Reading Room (search)
<http://lcweb.loc.gov/rr/mopic/>
Motion Picture Licensing Agency (permission)
<http://www.mplc.com/index2.htm>
Swank Motion Pictures (search and permission)
<http://www.swank.com/>
- **Images, Pictures, Graphics**
American Society of Media Photographers (search)
<http://www.asmp.org/>
Amico: Art Museum Image Consortium (search)
<http://www.amico.org/>
Design and Artists Copyright Society (U.K.) (search and permission)
<http://www.dacs.co.uk/>
Frank Niemer's Photography List (worldwide links; search and permission)
<http://www.mindspring.com/%7Efrankn/photo/stock.html>
 - **Music Sound Recordings, Performances, Compositions, and Recording Rights**
All Music Guides (search)
<http://www.allmusic.com/>
ASCAP: American Society of Composers, Authors and Publishers (search and permission)
<http://www.ascap.com/>
BIEM (international mechanical rights) (search and permission)
<http://www.biem.org/>
BMI (search and permission)
<http://www.bmi.com/>
Harry Fox Agency (search and permission)
<http://www.harryfox.com/>
Music Publisher's Association (search)
<http://www.mpa.org/copyright/searchcenter.html>
Recording Industry Association (search and copyright information)
<http://www.riaa.com/>
SESAC (search and permission)
<http://www.sesac.com/>
Songwriters and Music Copyright Resources: National Pop Songwriters Association (world-wide links; search and permission)
<http://www.blue-n-gold.com/halfdan/resources.htm>
 - **Plays and other Dramatic Works**
Baker's Plays (search)
<http://www.bakersplays.net/>
Broadway Play Publishing (search and permission)
<http://www.broadwayplaypubl.com/>
Dramatists Play Service, Inc. (search and permission)
<http://www.dramatists.com/>
Music Theatre International (search and permission)

<http://www.mtishows.com/>

Samuel French, Inc. (search and permission)

<http://www.samuelfrench.com>

Tams-Witmark Music Library, Inc. (search and permission)

<http://www.dramatists.com/>

- **Websites and other Online Works**

Copyright Clearance Center (search and permission)

<http://www.copyright.com>

Rscopyright (search and permission)

<http://www.icopyright.com/index.html>

- **Software**

Amazon.com Licensing Center (permission)

<http://www.amazon.com/exec/obidos/tg/browse/-/516912/103-9063656-3501437>

Software Publishers list (search)

http://simplythebest.net/shareware/software_publishers.html

3. Sample letter for obtaining permission to use copyrighted materials

Before sending a letter, you may want to phone or e-mail the copyright owner to verify the exact name and address of the copyright holder. Even if you obtain oral permission over the telephone, you will want to document the permission in writing.

Be certain to precisely describe your intended use, including:

- the amount of material to be used, i.e., pages 4-10, one chapter, 30-second excerpt of a symphony;
- the period of time during which the materials will be used, i.e. the entire semester, two weeks, three consecutive semesters;
- the number of students in the class;
- the purpose or nature of the use, i.e., classroom, publication, poster, presentation at conference, student recital;
- where and how it will be used, i.e., classroom, password-protected Blackboard class, electronic reserves, graphic in a PowerPoint slide.

Eliminate any ambiguity about your use, and be sure that the permission encompasses the full scope of your needs.

The copyright owner may grant or deny permission, or may grant permission, on the condition of a fee.

Sample Letter

[Southeastern Letterhead with return address, phone, fax and e-mail]

[Date]

[Name and address of addressee]

Dear [title, name]:

[If you called first, begin your letter with a reference to the recent telephone conversation.] I am [describe your position] at Southeastern Louisiana University. I would like your permission to [explain your intended use in detail as described above].

[Insert full citation to the original work.]

Please indicate your approval of this permission by signing the letter where indicated below and returning it to me as soon as possible. My fax number is included above. Your signing of this letter will also confirm that you solely own the copyright to the above described material.

Thank you very much.

Sincerely,

[your name and signature]

PERMISSION GRANTED FOR THE USE REQUESTED ABOVE:

[Name of addressee for an individual or name and title for a publishing house]

Signature _____

Date_____

If you do not hold the copyright, or if I need to request additional permission from someone else, please indicate:

The above request is approved on the understanding that full credit to the source will be given.

Required credit line:

Additional conditions:



Southeastern Louisiana University

Department of Comparative Sociology - SLU 01234 - Hammond, LA 70402

Phone: (985) 549-0000 Fax: (985) 549-1111

Date: June 9, 2003

Dear Sir or Madam,

I am writing to request permission to digitally reproduce a chart from the following book:

Squirrel, Ralph. *Everything in a Nutshell*. Autumn Publications, 2000, pg. 139, Chart 4B

I would like to include the above in my online course at Southeastern Louisiana University, Comparative Sociology 1234, Comparative Mammalian Sociology.

I will only reproduce the chart referenced above and no other related textual or graphic material will be included.

Access to this course is limited to those students enrolled in the current semester. Enrollment for the course is limited to 30 students. The course website is password-protected. The chart will be included in this class for Fall 2003, Spring 2004 and Summer 2004.

I will credit the chart as you specify below.

Please indicate your approval of this permission by signing the letter where indicated below and returning it to me as soon as possible. My fax number is included above. Your signing of this letter will also confirm that you solely own the copyright to the above described material.

Thank you very much.

Sincerely,
Dr. I. M. Rodent
Department of Comparative Sociology
Email: irodent@selu.edu

PERMISSION GRANTED FOR THE USE REQUESTED ABOVE:

[Name of addressee for an individual or name and title for a publishing house]

Signed _____ Date _____

If you do not hold the copyright, or if I need to request additional permission from someone else, please indicate:

The above request is approved on the understanding that full credit to the source will be given.

Required credit line: _____

Additional conditions: _____

C. Documentation

Keep a detailed record of your communications and correspondence with the copyright owners or permission-granting organizations, including:

- the date you requested permission,
- the date permission was granted,
- the person/organization that granted permission,
- the conditions of the permission,
- the date of expiration, and
- the number of copies made.

Also keep a record of your search to find the copyright owner and status of the work.

D. What to do if you can't locate the copyright owner or you get no response

Sometimes it is difficult determine and/or locate copyright owners, or you may not receive a response from the copyright owner. Although your efforts to obtain permission may be exhaustive, *you do not automatically have the right to use the copyrighted material*. Copyright law protects materials whether you get a response from the copyright owner or not.

If you come to a roadblock in your quest for permission, here are some other avenues you can pursue:

- Perform and document the fair use analysis again using the [Checklist for Fair Use](#) contained in this document. When there is no established copyright permissions market (see the fourth factor under [fair use exceptions](#) in this document), courts have favored for fair use. Can you make a case that your use would balance in favor of fair use?
- For photographs, manuscripts, and other archival materials, try contacting the library or archives where you have located the material. Often libraries and archives keep records of the copyright owners.
- Look for other materials that are in the public domain, or for materials that you can obtain more easily.
- Find out if the university or library already has a blanket license or access to a reproduction that can be used.
- Document your pursuit for permission. A "good faith" effort may tip the balance of the fourth fair use factor, the effect of the use upon the potential market, towards fair use.

VI. Checklist for Determining Fair Use

The safest course to follow when using copyrighted materials is always to get permission from the copyright owner before using the work. However, completing the Checklist for Fair Use (next page) provides faculty, staff and students a systemic way to examine if the use of a copyrighted work falls under the fair use exception. In adhering to copyright law, faculty, staff and students should document rationale for using copyrighted materials as evidence of making a “good faith attempt” in determining if permission is needed; the checklist provides this documentation as it details the purpose, nature, amount, and effect of the use of the copyrighted work in a particular project/class. Once completed, the checklist should be retained as a record demonstrating that a “good faith attempt” was made in determining whether the use of copyrighted work falls under the fair use exception. University faculty, staff and students may download a copy of the Checklist for Fair Use online at: http://www.selu.edu/documents/forms/checklist_fair_use.pdf.

If after completing the Checklist for Fair Use it is determined that the use of the copyrighted work does not fall under the fair use exception, faculty, staff and students must obtain permission before using the copyrighted work. See [Obtaining Permission to Use Copyrighted Works](#) in this document for more information on how to obtain permission.

Checklist for Fair Use

Please complete and retain a copy of this form in connection with each possible "fair use" of a copyrighted work for your project as evidence of making a "good faith attempt" in determining if permission is needed. If the use does not weigh in favor of fair use, permission must be obtained before the work is used.

Name: _____ Date: _____ Project: _____

Institution: _____ Prepared by: _____

Description of material being used: _____

PURPOSE

Favoring Fair Use

- The work is being used for the purpose of teaching, research or scholarship (*includes multiple copies for classroom use*)
- The work is being used in a criticism, comment, or news report
- The use of the work will be transformative or productive (*i.e., will change the work for a new utility*)
- The work will be used in a parody
- Access to the work will be restricted to the students in the class or other appropriate group
- The work is being used by a nonprofit educational institution

Opposing Fair Use

- The work is being used in commercial activity
- The use of the work will result in profit
- The work is being used for entertainment
- "Bad faith" effort is involved in use of work (*i.e., using illegally obtained work, removal of copyright notice from work, use of the work will not include credit to the original author, no effort made to determine if work is protected by copyright, or knowingly use copyright protected work*)

The PURPOSE of the use of the copyrighted work: FAVORS fair use DOES NOT FAVOR fair use

NATURE

Favoring Fair Use

- The work being used is published
- The work being used is factual or nonfiction based
- The use of the work is important to identified educational or research objectives

Opposing Fair Use

- The work being used is unpublished
- The work being used is highly creative (*i.e., art, music, novels, films, plays*)
- The work being used is fictional

The NATURE of the use of the copyrighted work: FAVORS fair use DOES NOT FAVOR fair use

AMOUNT

Favoring Fair Use

- Only a small quantity of the protected work is being used
- The portion being used is not central or significant to the entire work
- The amount being used is consistent with the research or educational purposes identified in the first fair use factor (purpose for use of the work)

Opposing Fair Use

- A large portion or the whole work is being used
- The portion being used is central to work or is the "heart of the work"

The AMOUNT of the copyrighted work being used: FAVORS fair use DOES NOT FAVOR fair use

EFFECT ON POTENTIAL MARKET

Favoring Fair Use

- The work being used is a lawfully acquired or purchased copy of original work
- Only one or a few copies are being made
- Use of the work will produce no significant effect on the market or potential market for copyrighted work
- There is no similar product marketed by the copyright holder
- There is no licensing mechanism in place for the use of the protected work

Opposing Fair Use

- Use of the work could replace a sale of the copyrighted work
- Use of the work significantly impairs market or potential market for copyrighted work or derivative
- There is a reasonably available licensing mechanism for use of the copyrighted work
- Affordable permission is available for use of the protected work
- Numerous copies are being made
- The work being used will be accessible on Web or in other public forum
- Use of the work will be repeated or long term

The EFFECT OF THE USE ON THE POTENTIAL MARKET: FAVORS fair use DOES NOT FAVOR fair use

Decision Made for Use of Copyrighted Material: _____

Rationale for Decision: (*Use back of form for more space*)

Appendix A: Duration of Copyright Protection

	Duration of Protection	Exceptions
Unpublished Works		
	<ul style="list-style-type: none"> • Works not registered with the U.S. Copyright Office are protected for the life of author plus 70 years • Works registered in unpublished form before 1978 receive 28 years of protection from registration, with an additional 67 years of protection if the registration was renewed in the 28th year. 	<ul style="list-style-type: none"> • Works created and not published before 1978, that are subsequently published before 2003, receive an additional 45 years of protection from date of publication
Published Works		
Published before 1978	<ul style="list-style-type: none"> • 1st term of 28 years, • If renewed in 28th year, additional 67 years of protection. • Must include formal copyright notice in first published edition 	<ul style="list-style-type: none"> • Failure to renew in 28th year, in public domain • Works published between January 1, 1964 and December 31, 1977 are not required to apply for renewal in 28th year. These works have automatic renewal, giving them 95 years of protection from first publication • Failure to include proper copyright notice in first publication, in public domain • Foreign works are not required to renew or include formal copyright notice (see below) • Sound recordings produced before February 15, 1972 are not protected. However, the work recorded may still be protected
Published between 1978 and March 1989	<ul style="list-style-type: none"> • Life of author plus 70 years • Works for Hire: 95 years from publication OR 120 years from creation, whichever shorter • Must include formal copyright notice 	<ul style="list-style-type: none"> • Work is still protected if failure to include proper copyright notice is corrected within five years in subsequent publication • Foreign works are not required to have formal copyright notice (see below)
Published after March 1989	<ul style="list-style-type: none"> • Life of author plus 70 years • Works for Hire: 95 years from publication OR 120 years from creation, whichever shorter • Notice of copyright is <u>not</u> required 	
Foreign Works		
Includes published and unpublished works	<ul style="list-style-type: none"> • Life of author plus 70 years • Works for Hire: 95 years from publication OR 120 years from creation, whichever shorter • Notice of copyright is <u>not</u> required 	<ul style="list-style-type: none"> • Protection is extended only to authors from countries that are a part of: -World Trade Organization -Berne Convention -WIPCO Copyright Treaty -WIPCO Performances and Phonograms Treaty -Presidential Proclamation

Appendix B: Example Scenarios Involving Copyrighted Materials

Scenario 1:

An instructor wants to make a photocopy of a journal article to distribute to each student in the class.

1. *Is the material protected by one or more copyrights?*
The article is protected by copyright; it was published in 1986 and includes a copyright statement.
2. *Is the use one of the exclusive rights of the copyright holder?*
Reproducing or copying works is an exclusive right of the copyright holder.
3. *Is the use an exception to the exclusive rights of the copyright holder?*
This use is not one of exceptions listed.
4. *Is the use one of the common education material types or uses?*
Multiple copies for classroom use is allowed under the 1976 *Guidelines for Classroom Copying in Not-for-Profit Educational Institutions with Respect to Books and Periodicals*. However, this exception can only be applied under the following conditions:
 - only one copy for each student is made,
 - the decision to use the material was spontaneous and there was not enough time to request permission,
 - the copies were made for only one course,
 - not more than one copy was made from the same author,
 - not more than three copies were made from periodical volume,
 - no more than nine instances of multiple copying of journal articles were made during the same course in the same semester.
5. *Does the use of the material weigh in favor of the four fair use factors?*
If the conditions above (item 4) cannot be met, the instructor should analyze the use of the material using the four fair use factors.

Scenario 2:

An instructor wants to scan a journal article to put into a Blackboard course.

1. *Is the material protected by more one or more copyrights?*
The article is protected by copyright; it was published in 1992 and includes copyright statement.
2. *Is the use one of the exclusive rights of the copyright holder?*
Reproducing works is an exclusive right of the copyright holder.
3. *Is the use an exception to the exclusive rights of the copyright holder?*
This use is not one of the exceptions listed.

4. *Is the use one of the common education material types or uses?*

Although this is "distance learning," the TEACH Act only addresses the use of audiovisual and dramatic music works.

5. *Does the use of the material weigh in favor of the four fair use factors?*

The fair use exception could be applied here. Before performing the fair use analysis, the instructor may wish to look for an electronic copy that is already available through a licensed database at the Library. If there is no copy available, the instructor should use the Checklist for Fair Use, analyzing, weighing and balancing all four factors.

- Purpose - Under the first factor, purpose, this article will be used for teaching, in a non-profit educational institution, with restricted (password) access. This favors fair use.
- Nature - The nature also favors fair use, because the work is non-fiction, published, and important to the educational objective of the course.
- Amount - The amount may oppose fair use because the whole work is being reproduced.
- Effect of the Use Upon the Market - The effect of use upon the market is mixed. The use opposes fair use because the instructor is replacing a sale of the item, the article may already be available in a licensed full-text database at the Library, and the instructor is making it accessible on the web. However, the use favors fair use because it is a lawfully acquired copy and there probably is not a significant effect on the market if it is used once.

When balancing and weighing the four fair use factors, scanning the articles and making it accessible through BlackBoard would most likely balance in favor of fair use if the article is only used for one semester. It is a good idea to retain the checklist and document your fair use analysis. Alternately, the instructor can always request permission from the copyright holder.

Scenario 3:

An instructor wants to copy multiple journal articles and book chapters to create a coursepack to be sold to students by a local print shop.

1. *Is the material protected by one or more copyrights?*

Each article must be examined and analyzed to determine if it is protected by copyright. See [How Do I Know?](#) in this document.

2. *Is the use one of the exclusive rights of the copyright holder?*

Reproducing works is an exclusive right of the copyright holder.

3. *Is the use an exception to the exclusive rights of the copyright holder?*

This use is not one of the exceptions listed.

4. *Is the use one of the common education material types or uses?*

This use is addressed in the *Guidelines for Classroom Copying in Not-for-Profit Educational Institutions with Respect to Books and Periodicals*. Making multiple copies to replace anthologies, compilations or collected works, i.e. coursepacks is clearly prohibited, unless the instructor has received permission from the copyright holder to copy and distribute the materials. The instructor has two options. The *Guidelines* do permit making multiple copies, but only nine instances per semester per course are allowed, and the articles should be distributed individually to the students. Or, the instructor can seek permission from the copyright holders for each article or chapter for compiling the coursepack. The instructor can contact each copyright holder directly or use the Copyright Clearance Center to assist in this task. The copyright holder may assess a fee.

5. *Does the use of the material weigh in favor of the four fair use factors?*
Courts rulings show this use to not weigh in favor of the four fair use factors.

Scenario 4:

An instructor wants to capture an image from the Internet and place it on her own web page.

1. *Is the material protected by one or more copyrights?*
Unless the instructor is certain the image was obtained from a “free or public domain clip-art” web site, the instructor should assume that the image is protected by copyright. Creative works are automatically protected by copyright.
2. *Is the use one of the exclusive rights of the copyright holder?*
Reproducing this image is an exclusive right of the copyright holder.
3. *Is the use an exception to the exclusive rights of the copyright holder?*
There are no exceptions or accepted educational guidelines that address this type of use.
4. *Is the use one of the common education material types or uses?*
There are no exceptions or accepted educational guidelines that address this type of use.
5. *Does the use of the material weigh in favor of the four fair use factors?*
The instructor must analyze, balance and weigh this use using the Checklist for Fair Use.
 - Purpose - The purpose may be questionable, if the web site is a personal website that is not for research, scholarship, comment, reporting, or teaching. Additionally, fair use is opposed if credit is not given to the copyright holder.
 - Nature - The nature of the image is creative, which opposes fair use.
 - Amount - The amount, assuming the instructor uses the entire graphic, would also oppose fair use.

- *Effect of Use Upon the Market* - Making a single copy will not have a significant effect on the market, and there is no established permissions market for images. However, the image was made accessible on the web, which opposes fair use.

Based on four-factor analysis this use would oppose fair use. The instructor should seek permission to use this graphic or find another acceptable graphic that is in the public domain.

Scenario 5:

The instructor wishes to capture an image from the Internet or scan an image from a book and put it in her Blackboard course.

1. *Is the material protected by one or more copyrights?*

Unless the instructor is certain the image was obtained from a “free or public domain clip-art” web site, the instructor should assume that the image is protected by copyright. This is not one of the categories of materials that are ineligible for copyright protection.

2. *Is the use one of the exclusive rights of the copyright holder?*

Reproducing this image is an exclusive right of the copyright holder.

3. *Is the use an exception to the exclusive rights of the copyright holder?*

This use is not an exception to the exclusive rights.

4. *Is the use one of the common education material types or uses?*

This use is addressed as one of the common education material types and uses, specifically in the TEACH Act (see Distance Learning—Performance and Display in this document). The TEACH Act addresses the performance and display of audio-visual works, and includes several conditions that must be met in order comply with the law:

- the image must be directly related to the lesson,
- notice of copyright must be provided,
- the image is only available to students in the class (in a password-protected Blackboard class) for a relevant period of time,
- technology is used to prevent reproductions or further distribution, and
- the image was lawfully made and acquired.

The instructor must also be certain that images from the Internet were lawfully placed on the web. In the case of the graphic scanned from a book, the instructor must also determine whether the graphic is already available in a digital form. The instructor should not create a digital form of an analog image if a digital reproduction is available. If all the conditions are met, the instructor may use the image in a Blackboard course.

Scenario 6:

The instructor wishes to copy a work of art from a book and to put it online.

1. *Is the material protected by one or more copyrights?*

If it has been determined that the book is copyrighted, the instructor should assume that the individual graphic is also protected by copyright.

2. *Is the use one of the exclusive rights of the copyright holder?*

Reproductions, including scanning an image, are the exclusive right of the copyright holder.

3. *Is the use an exception to the exclusive rights of the copyright holder?*

This is not an exception, since this is not face-to-face teaching.

4. *Is the use one of the common education material types or uses?*

This may be "online learning," and could fall under the TEACH Act outlined in the [Distance Learning—Performance and Display](#) section of this document. However, in order to take advantage of this exception, the graphic cannot be put online without restricting access to only students enrolled in the class.

5. *Does the use of the material weigh in favor of the four fair use factors?*

The instructor should apply the four-factor test:

- Purpose - The instructor's purpose for using this image is most likely for teaching and the image is on a non-profit educational institution website. This would mostly like favor fair use.
- Nature - The nature of the work is creative, which has been published. This would oppose fair use.
- Amount - The amount of the work is the entire graphic from the book, which opposes fair use.
- Effect of Use Upon the Market - There may be little effect on the market for the work. However, if the instructor wished to make the image accessible on the web and readily available, this would oppose fair use.

Based on four-factor analysis making this work of art accessible online would not weigh in favor of fair use. The instructor should seek permission to use this graphic or find another acceptable graphic that is in the public domain.

To request permission from the copyright holder, the instructor should start by contacting the publisher of the book that contains the work of art. Although the publisher has received permission to reproduce the work in the book, the publisher may not be able to grant permission to use the graphic because the copyright holder may be another individual. However, the publisher should be able to direct the instructor to the entity they believe to be the copyright holder.

Scenario 7:

An instructor creates a PowerPoint presentation at a scholarly conference. The presentation includes graphics and video clips created by others. He properly cites the source of the graphics and video clips in his presentation. He also distributes PowerPoint handouts of the presentation to conference attendees. The presentation was originally created over three years ago.

1. *Is material protected by one or more copyrights?*
Copyright notice appears on the graphics and videotape.
2. *Is the use one of the exclusive rights of the copyright holder?*
Reproductions, including making digital copies, are the exclusive right of the copyright holder.
3. *Is the use an exception to the exclusive rights of the copyright holder?*
Although the original presentation was created for face-to-face teaching, the presentation is now being used for a use other than face-to-face teaching. These exceptions do not apply.
4. *Is the use one of the common education material types or uses?*
There are two issues that need to be considered:
 - The first issue is displaying the PowerPoint presentation at a conference. This use is addressed in [Multimedia Works and Off-the-air Recordings](#) in this document. Educators may perform and display multimedia projects in workshops and conferences. However, there is a limitation on the time period that the materials can be used. The copyrighted materials can only be used for two years. After two years, the presenter must obtain permission for each copyrighted portion.
 - The second issue involves the presentation, PowerPoint slide show, and the handouts. The guidelines above only address performance and display of the graphics and video. Making copies or reprinting the graphics in handouts is not addressed in the *Fair Use Guidelines for Educational Multimedia* (see [Multimedia Works and Off-the-air Recordings](#) in this document).
5. *Does the use of the material weigh in favor of the four fair use factors?*
The instructor needs to analyze each piece of copyrighted material, graphics and video, using the four fair use factors in order to display the presentation and/or to copy and distribute handouts that include the graphics.

Scenario 8:

A CD-ROM is included in the instructor's textbook. The textbook that is sold or rented to the students does not include this CD-ROM. The instructor wishes to provide a copy to each student either by distributing

copies he has made of his CD-ROM or by making the CD-ROM accessible through Blackboard.

Copyright may not be the only issue that needs to be considered here. Further reproduction even in a password-protected Blackboard course may be prohibited by licenses and contracts associated with the computer disk purchase. Licenses may restrict distribution or access to the person; i.e. the instructor, who purchased the instructor's textbook. Textbook Rentals has negotiated some contracts with textbook publishers to make CD-ROMs available to students. The instructor should read the labels and material that accompany the CD-ROM to determine if the CD-ROM can be copied and/or distributed and used by others.

1. Is material protected by one or more copyrights?

Although there may be no licenses or contracts that prevent duplication or distribution through a network, the instructor should assume that the material, text and graphics, on the CD-ROM are also protected by copyright.

2. Is the use one of the exclusive rights of the copyright holder?

Reproduction and distribution are exclusive rights of the copyright holder.

3. Is the use an exception to the exclusive rights of the copyright holder?

Reproducing a computer disk or making it accessible in Blackboard is not one of the exceptions. Making copies of computer disks is only permissible as a computer backup copy.

4. Is the use one of the common education material types or uses?

Although this course may be a distance learning course, the TEACH Act only allows "clips in reasonable and limited portions in the environment of face-to-face teaching." The TEACH Act further states, "Instructors may not provide software online for student's use in distance education without the expressed permission of the copyright owner."

Reproducing and/or distributing this CD-ROM does not fall under educational multi-media use, because

- it was not created by the instructor, and
- the CD-ROM is not used in face-to-face teaching.

5. Does the use of the material weigh in favor of the four fair use factors?

If copyright is the only issue that needs to be addressed in order to reproduce or make the CD-Rom accessible, it is likely that this type of reproduction will not weigh in favor of fair use.

- Purpose - The purpose would favor fair use since this will be used in a teaching situation in a non-profit institution and access will be restricted to students in the course.
- Nature - The work is published, but includes some creative works, so the nature of the work both favors and opposes fair use.

- Amount - The amount of the work that is to be reproduced is 100%, and opposes fair use.
- Effect of Use Upon the Market - The effect on the potential market could oppose fair use since the reproduction could replace a sale, be reproduced again, and be used repeatedly.

The instructor should ask permission to reproduce and/or make the disk accessible in BlackBoard. It may be possible for Southeastern's Bookstore or Textbook Rentals to negotiate a contract with the copyright owner to make the CD-ROM accessible to a group of students.