

**CASE WESTERN RESERVE UNIVERSITY  
COPYRIGHT COMPLIANCE POLICY**

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## **CASE WESTERN RESERVE UNIVERSITY COPYRIGHT COMPLIANCE POLICY**

### **RATIONALE**

As one of the nation's major research institutions, Case Western Reserve University is committed to leadership in the creation of new knowledge, and also is committed to respect for the rights of all copyright holders. In the discovery, use, and dissemination of knowledge, the University fosters integrity in the pursuit of scholarly investigation while contributing to society as a whole.

Respect for the rights of copyright holders and the copyright laws is especially critical in the electronic environment, where copyrighted works are vulnerable to misuse and unintended further distribution, and legislation is evolving with significant new fines and

## **1. POLICY STATEMENT**

The University expects all faculty, students, and staff to abide by the Copyright Compliance Policy and to be familiar with federal copyright laws relevant to the academic use of copyrighted materials.

The University's reputation as a leader in research and information technologies is strengthened and protected by copyright compliance.

All members of the University community need to understand that copyright infringement may have serious consequences, including significant personal liability for

### **3. COPYRIGHT DEFINED**

Copyright is a property right in an original work of authorship. Copyright is automatic, and begins the moment any “original work of authorship is fixed in a tangible medium of expression.”<sup>1</sup>

- Original works of authorship may be literary, dramatic, musical, or artistic: e. g., books, articles, photographs, paintings, sculpture, architecture, pantomimes, choreography, music, or sound recordings. These categories are broad, and may include software, web pages, electronic discussion lists, email.
- “Fixed medium” is also broad: e.g., print, film, a disc, a website, or email. Unpublished as well as published works are fixed, and have automatic copyright.
- Copyright protection does not require any form of copyright notice or registration with the U.S. Copyright Office, although affixing a notice and registering a work enhances protection of the owner’s rights.

Copyright does not apply to facts, theories, ideas, mathematical equations, formulas, concepts, titles, systems, or processes, but works embodying such elements may be protected under copyright law if they show some minimal level of creative expression. Copyright only protects the expression of such content. Copyright does not apply to work attributed to the federal government, which can however receive and does hold copyrights transferred to it by other parties (state and local government works may be subject to copyright).

### **4. COPYRIGHT NOTICES**

Many, but not all, works subject to copyright are published with a notice such as “Copyright 1998 by Case Western Reserve University.” Affixing a copyright notice is beneficial to the copyright owner because the notice informs the public that a work is protected by copyright, identifies the copyright holder and shows the year of first publication. When a work bears a copyright notice, it is much more difficult for an alleged infringer to interpose a defense based upon innocent infringement.

The absence of a copyright notice does not necessarily mean that the work in question is not copyrighted. The use of a copyright notice is optional for works published on or after March 1, 1989. The copyright owner of works published between January 1, 1978 and March 1, 1989 had five years from the date of publication to correct the omission of notice. Works published prior to January 1, 1978 without a copyright notice entered the public domain immediately upon publication.

Ignorance of whether a work is protected by copyright is no defense against a claim of infringement. The burden is on the user to determine whether he or she is acting legally.

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<sup>1</sup> §102.

## **5. DAMAGES FOR COPYRIGHT INFRINGEMENT**

A copyright owner in a general copyright infringement suit may seek damages that include

- court costs and attorney's fees
- actual damages
- statutory damages, where applicable
- profits of the infringer that are attributed to the infringement
- temporary and permanent injunction against infringement
- impoundment of infringing copies
- destruction of infringing copies

Damages assessed against an infringer may be very substantial. A court may impose statutory damages of up to \$30,000 for each act of infringement (\$150,000 for willful infringement).

## **6. COPYRIGHT REGISTRATION**

Copyright registration is accomplished by filing the appropriate form with the United States Copyright Office in Washington, D. C. and paying the required fee. Registration is beneficial to the copyright owner in several ways:

- Registration establishes a public record of the copyright claim.
- Registration is a pre-condition to filing an infringement suit in federal court if the work is of U. S. origin.
- Registration prior to or within five years of publication is prima facie evidence in court of the validity of the copyright.
- Registration prior to or within three months of publication (or prior to its infringement) entitles the copyright owner to seek statutory damages and attorney's fees in an infringement suit.
- Registration allows the copyright owner to record the registration with the U. S. Customs Service for protection against importation of infringing copies.

## **7. COPYRIGHT EXCLUSIVE RIGHTS**

Copyright owners hold a number of exclusive rights that others may not exercise unless invoking legal exemptions. Commonly referred to as a “bundle of rights,” all copyrights can be retained by the creator or “unbundled” individually. Over time, publishers, employers, or corporations may hold some, or all, of the exclusive copyrights.

University faculty, students, and staff may wish to copy articles for a class, use a graphic

## **8. TERM LIMITS OF COPYRIGHT PROTECTION**

The length of copyright protection afforded to a particular work depends upon both the date and the circumstances of its creation. A work by an individual author or authors is protected for a term based upon the life of the authors. Anonymous and pseudonymous works and works made for hire are protected for a specific term of years. Once these terms have expired, or the copyright holders have relinquished their rights, the works pass into the “public domain.”

### **Using Copyrighted Works Without Permission–The Public Domain**

The intellectual commons of the “public domain” is the foundation for an informed society and the progress of knowledge. It affords researchers the unrestricted use of works that have entered the public domain.

A work moves into the public domain only after the exclusive rights assigned by federal law have expired or when a copyright holder places a work directly in the public domain. A common misconception about the definition of public domain is that any work without a copyright notice is free to be used without permission, or that works on the Internet are in the public domain.

“Public domain” is defined by specific dates of creation or publication (sometimes relative to the presence of a copyright symbol or notice), and by terms of copyright protection afforded to one or more authors for specific times, whether or not a work is published or unpublished.

An exception to copyright protection governs U.S. government publications, which carry no copyright.<sup>5</sup> This exemption applies to federal works, not those of state or local governments, which retain copyright. Additionally, publications funded by the government but authored by someone hired to do the work (grants, contracts), or to other published edited, annotated or compiled versions of government documents, may be copyrighted.

University faculty, students, and staff must determine the author and date of a work, in order to determine that the work is in the public domain and to use the work without restrictions. When in doubt about copyright ownership, databases, indexes, and/or publishers and clearinghouses are helpful in determining ownership.

When ownership is clear, the included chart “When Works Pass Into the Public Domain” aids in determining true public domain a work’s status:

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<sup>5</sup> §105.

## WHEN WORKS PASS INTO THE PUBLIC DOMAIN<sup>6</sup>

<b>DATE of WORK</b>	<b>PROTECTED FROM...</b>	<b>TERM of PROTECTION</b>
Created 1-1-78 or later	When work is fixed in a tangible medium of expression	Life + 70 <sup>1</sup> years. If work is of corporate authorship, the shorter of 95 years from publication, or 120 years from creation <sup>2</sup>
Published before 1923	Now is in public domain	None, expired.
Published from 1923-63	When published with notice <sup>3</sup>	28 years + possibility of renewal for 67 years. If not renewed, is in public domain.
Published 1964-77	When published with notice	28 years for 1 <sup>st</sup> term + automatic renewal for 67 yrs
Created before 1-1-78 but not published	1-1-78, effective date of the Copyright Act which eliminated common law copyright	Life + 70 years, or 12-31-2002, whichever is greater.
Created before 1-1-78 but published between then and 12-21-2002	1-1-78, the effective date of the Copyright Act which eliminated common law copyright	Life + 70 years or 12-31-2002, whichever is greater

<sup>1</sup> Term of joint works is measured by life of longest-lived author.

<sup>2</sup> Also works for hire, anonymous & pseudonymous works 17 U.S.C. § 302(c)

<sup>3</sup> Under the 1909 Act, works published without notice went into the public domain upon publication. Works published without notice between 1-1-78 and 3-1-89, effective date of the Berne Convention Implementation Act, retained copyright only if, e.g., registration was made within 5 years. 17 U.S.C. § 405

The University encourages the use of public domain works to facilitate the exchange of knowledge and further the academic mission. Committed to leadership in research, the University also encourages members of the University community to place their works into the public domain, and to negotiate publication without restrictions, when appropriate. Sharing knowledge expedites use by other researchers, and embodies the spirit and intent of the Copyright Act to promote the progress of knowledge.

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<sup>6</sup> Based upon chart by Lolly Gassaway (University of North Carolina at Chapel Hill) and used with



## 9. COPYRIGHT EXEMPTION

### Using Copyrighted Works Without Permission—§107, The Fair Use Doctrine

Copyright law allows limited exemptions for copying, distribution, modification, and performance and display of copyrighted works without the copyright holder's permission, but exemptions are granted *only under certain circumstances*. This provides a balance that protects the owner's rights while recognizing the need of others to use the work to create new works. The most important exemption for educational institutions is the one known as "fair use."

Copyright law does not specify exact limitations of fair use, such as a specific amount of material that may be safely copied or used without permission. Instead it lists four factors as the basis for determining whether a particular use of copyrighted material is a fair use:

1. The purpose and character of the use
2. The nature of the copyrighted work
3. The amount and substantiality of the portion used in relation to the whole
4. The effect of the use upon the potential market for or value of the work

### Applying the Four Factor Test

If the use is for the purposes stated in the statute, and if the term of copyright protection is still in effect, each of the following four factors must be applied, in order to use the work without seeking permission. The fair use test is applicable to single and multiple copies for the classroom. While any single factor might not lend itself to a fair use, the combined analysis of the other factors can tip the balance for an overall fair use:

#### **Factor 1: Purpose—the environment and character of the use**

Nonprofit, educational uses are favored over commercial uses.

Transformative uses are favored over reproductions.

#### **Factor 2: Nature—type of work being used**

Published works are favored over unpublished works.

Nonfiction or factual works are favored over fiction or creative expressions.

Printed works are favored over commercial audiovisual works.

Consumable works (standard tests, workbooks) have no fair use.

#### **Factor 3: Amount & Substantiality of the portion used (quantitative and qualitative)**

Small portions (unless they are the heart of the work) are favored over large portions.

Thumbnail, low-resolution images are favored over full sized images.

#### **Factor 4: Effect of the use upon the potential market for or value of the work**

Use favored if sales, value, or potential sale of work not reduced, or if purchase would not have occurred; considered most heavily weighted factor in recent years.

A detailed fair use chart is available in Appendix A. Examples of activities that courts have regarded as fair use, in specific circumstances: quotation of excerpts for purposes of comment and criticism, short quotations in a scholarly or technical work to support

observations, parody of portions of a work, brief quotations in a news report, use in a lesson or assignment by a student or instructor.

Publishers also can exempt educational uses of copyrighted works, but such exemptions must be stated within the materials. This commonly occurs within “Acceptable Use” policies noted on electronic databases and journals, or that are present on websites.

There are various “guidelines” that have attempted to apply quantitative restrictions to fair use, and they generally are regarded as too restrictive for academe. They vary from guidelines on the use of formats, to classroom copying (content and word amounts), and other uses. Commonly the guidelines state the minimums, not the maximums, and as such have often been considered safe harbor guidelines by the general community. While some have been crafted by collaborative efforts, none have the force of law or have been

DMCA also adds rights to include copyright management information (CMI) on works.<sup>7</sup> CMI is broadly defined to include the electronic copyright notice, name of an author or copyright owner, title of a work, or anyone credited on a work. Removal or alteration of CMI from a work is prohibited. All CMI that appears on the original work must be included when uploading the copyrighted work onto a network.

**New Definitions and Liabilities:** DMCA broadly defines the scope of network providers, in addressing transitory digital network communications, system caching, information residing on systems or networks at the directions of users such as course websites, and information search tools.<sup>8</sup> As such, it redefines the University as an Online Service Provider (OSP), making the University subject to contributory infringement penalties when its users infringe upon others' copyrights.

**Take Down Notice:** The University, as OSP, is not liable for monetary relief or for injunctive relief for a user's infringement of copyright, provided that the University does not have actual knowledge of infringement, receives no financial benefit from it and-upon receipt of proper notification of a claimed infringement,<sup>9</sup> acts "expeditiously" to remove material or disable access to the infringing material.<sup>10</sup>

**Conditions for Protection from Liability:** The University, as OSP, must "adopt and reasonably implement, and inform" users of the system or network that policies are in place regarding appropriate use of networks and systems. The University must also terminate network or system privileges of repeat infringers, and must accommodate and not interfere with technical measures that protect digital copyrighted works.

The requirement to have policies in place in order to take advantage of safe harbor provisions protects the University. Increased awareness of copyright laws makes it less likely that an individual can claim ignorance of copyright law and avoid penalties in an infringement claim. The University complies with the law by registering a designated



**Institutional Requirements:**

- Accredited institution is a nonprofit educational or governmental body.
- Copyright information that accurately describes and promotes compliance is available for and distributed to faculty, students, staff.
- Notices are provided to users that materials on systems and networks may be subject to copyright protections and must not be violated.
- Transmission of content is made solely for students enrolled in the course.

**Information Technology Officials' Requirements:**

- Technological measures reasonably prevent
  - retention of transmitted work in accessible form, beyond class session,
  - unauthorized copying/dissemination of the work in accessible form, and
  - interference with technological protection measures designed by copyright owners to prevent retention or dissemination of their works.
- System or network reasonably prevents unauthorized, unaffiliated users.
- The copy of the work is maintained on the system or network and is accessible only for a time reasonably necessary to facilitate the transmissions.
- Copies made for transmitting purposes are retained by and solely used by the institution.

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The TEACH Act applies to digitized materials utilized in the “mediated instructional activities” of distance education. TEACH Act does not apply to digitization of materials that would not normally occur in the classroom setting, and thus does not cover materials required for students to study, read, listen to or watch on their own time.

The fair use doctrine may also be applied in analyzing activities in the digital environment. Therefore, if the distance education use is not applicable, or cannot meet all of the TEACH Act requirements, one should apply the §107 fair use four factor test.

## 11. USING COPYRIGHTED WORKS—SEEKING PERMISSIONS

University faculty, students, and staff should use the following basic strategy to determine if permission is needed to use a copyrighted work:

- Determine if it is a protected or unprotected work:
  - No permission is needed if it is in an unprotected category (e.g., it cannot by its nature be copyrighted, it is a U.S. government publication, or it is in the public domain.)
  - Permission may be needed if it is a protected work.
- If it is a protected work:
  - apply the fair use doctrine to:
    - determine if the proposed use meets the requirements for teaching, scholarship, criticism, commentary, research, or reporting, and then
    - analyze the fair use four factor test (purpose and character of the use of the work, the nature of the work, the amount and substantiality used, the effect on the market or potential market.)

If the proposed use appears to fail the fair use test, either identify another work that could be used instead without copyright violation or modify the proposed use and reapply the fair use test. General consultation and information from University Library is available to aid in the fair use test and decision process, although all final decisions rest with the individual. If the use is still not fair, seek permission of the copyright holder.

- Performance or display used in a face-to-face mediated teaching setting where the work is integral to the class is permitted.
- Performance or display of a work via a digital transmission:
  - Use §§110,112 TEACH Act requirements (checklist is available in Appendix B) to determine rights. If not applicable, apply the fair use test.
  - If neither §§110, 112, or fair use requirements qualify, seek permission or alter the use of the work and reapply the fair use test.
  - If the use fails all requirements, seek permission from the copyright holder.

### **When Permissions Are Needed**

University faculty, students, and staff are encouraged to take advantage of legal exemptions when using copyrighted works in instruction. If exemptions do not apply and the work must still be used, seek permission from the copyright holder.

Since exclusive rights can be transferred or “unbundled,” it may be necessary to verify the current copyright holder. In scholarly works, the copyright holder is often a publisher, although creators can negotiate separation and retention of some of their rights.

University faculty, students, and staff can search for copyright holders online at the U.S. Copyright Office, the Copyright Clearance Center, through various publishers' sites and offices, and with the help of academic faculty directories, and databases and indexes.

Permissions can be obtained directly from the copyright owner (if applicable), through a clearinghouse like the Copyright Clearance Center, or through commercial services such as bookstores, where copyrights are secured for coursepacks. An online permissions

## **APPENDIX A      CHECKLIST FOR FAIR USE**

### **1) PURPOSE**

#### **Favoring Fair Use**

Teaching  
Multiple copies for classroom  
Scholarship  
Criticism  
Commentary  
News reporting  
Parody  
Transformative use  
Restricted access for class use

#### **Opposing Fair Use**

Commercial use  
Entertainment use  
Financial benefit  
Removal of copyright notice  
Unrestricted use



## **APPENDIX B.      TEACH ACT CHECKLIST**

Expanded rights of §110(2) and §112(f) also bring additional limits and conditions to the performance and display of copyrighted works in the classroom and via transmissions.

### *Conditions and Requirements for Faculty, Staff, and Students*

The institution is a nonprofit accredited educational institution or government agency.

The institution has a policy on the use of copyrighted works.

The institution provides information about copyright to faculty, staff, and students.

The systems will not interfere with technological controls embedded in the materials.

The materials to be used are specifically for students enrolled in the class

Only the enrolled students in the class have access to the materials.

Materials are offered at the instructor's direction, and are directly related to the course.

The class is part of the regular offerings of the institution.

Copyright notices are included on materials protected by copyright.

Technology reasonably prevents the ability to retain or further distribute the materials.

Materials are available only for the time relevant to the context of the class session.

Materials are stored on secure servers and transmitted only as permitted by this law.

Only the copy needed to make the transmission is made.

Materials are of the proper type and amount authorized by this law:

- entire performances of nondramatic literary and musical works
- reasonable and limited parts of dramatic literary, musical, or audiovisual works
- displays of other works such as images in amounts analogous to typical displays in the face-to-face classroom.

Materials are not among those types the law excludes from coverage:

- Copies unlawfully obtained
- Materials specifically marketed for digital distance education classroom use
- Textbooks, coursepacks, and other materials typically purchased or used by students for independent study outside the classroom or session.

If digitizing an analog work:

- only the amount authorized for transmission is digitized
- there is no digital copy of the work available except that with technical protections to prevent using it for class in the way the statute authorizes it.

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## **APPENDIX C. EXEMPTIONS TO §1201 (DMCA)**

### **Exemptions to §1201 Rules:**

There are exemptions that allow researchers to circumvent some of the restrictions, but the conditions are narrow and specific and must be read for possible violations to other sections of The Act. Exemptions protect both the research and distribution of research results when the results are not for commercial or piracy uses. In brief, §1201 (d)-(j):

Educational institutions may gain access to a copy in order to make a good faith determination related to acquisitions, when a copy of the work is electronically protected and not reasonably available in another form.

Exemptions for reverse engineering, encryption research and security testing:

- Reverse engineering research allowed, to enable identification and analysis for interoperability, if not readily available to the person engaging in circumvention.
- Encryption research allowed, to analyze encryption technology flaws and vulnerabilities if the copy is lawfully obtained, the research is necessary, the researcher makes a good faith effort to obtain authorization prior to circumvention. Also considered: the dissemination of such research and its intent, the role of the researcher in the field of encryption technology, and whether the researcher provides the copyright owner with notices of the findings of research.
- Security testing allowed, with owners' authorizations, if research is used to solely promote security, information obtained does not facilitate infringement.

DMCA also prohibits trafficking in devices or services that circumvent rights controls that are designed to restrict copying or playing without authorization.

**APPENDIX D. OTHER EXEMPTIONS–STATUTES**

**STATUTORY EXEMPTIONS TO EXCLUSIVE RIGHTS**

Search U.S.C. by section number at <http://www4.law.cornell.edu/uscode/17/>

§ 107 Limitations on exclusive rights, Fair Use

§ 110 Limitations on exclusive rights, Certain performances & dS3sv5on exclusive ruamuTEACH Act)

**APPENDIX E**

**WHEN WORKS PASS INTO THE PUBLIC DOMAIN**

<b>DATE of WORK</b>	<b>PROTECTED FROM...</b>	<b>TERM of PROTECTION</b>
Created 1-1-78 or later	When work is fixed in a tangible medium of expression	Life + 70 <sup>1</sup> years. If work is of corporate authorship, the shorter of 95 years from publication, or 120 years from creation <sup>2</sup>
Published before 1923	Now is in public domain	None, expired.
Published from 1923-63	When published with notice <sup>3</sup>	28 years + possibility of renewal for 67 years. If not renewed, is in public domain.
Published 1964-77	When published with notice	28 years for 1 <sup>st</sup> term; automatic renewal for 67 yrs
Created before 1-1-78 but not published	1-1-78, effective date of the Copyright Act which eliminated common law copyright	Life + 70 years, or 12-31-2002, whichever is greater.
Created before 1-1-78 but published between then and 12-21-2002	1-1-78, the effective date of the Copyright Act which eliminated common law copyright	Life + 70 years or 12-31-2002, whichever is greater

<sup>1</sup> Term of joint works is measured by life of longest-lived author.

<sup>2</sup> Also works for hire, anonymous & pseudonymous works 17 U.S.C. § 302(c)

<sup>3</sup> Under the 1909 Act, works published without notice went into the public domain upon publication. Works published without notice between 1-1-78 and 3-1-89, effective date of the Berne Convention Implementation Act, retained copyright only if, e.g., registration was made within five years. 17 U.S.C. § 405

Chart based on chart by Lolly Gasaway and used with permission. Notes courtesy of Professor Tom Field, Franklin Pierce Law Center and used with permission.

## APPENDIX F      RESOURCES

### GENERAL RESOURCES

**A Crash Course in Copyright:** copyright basics, fair use test, myths, in easy language  
<http://www.utsystem.edu/OGC/IntellectualProperty/cprtindx.htm>

**When Works Pass Into the Public Domain:** what is currently in the public domain  
<http://www.unc.edu/~unc1ng/public-d.htm>

**Copyright QuickGuide,** Kenneth Crews, Indiana University-Purdue University, Indianapolis: overview and brief commentary; links to Copyright Management Center homepage with court decisions, analyses.  
<http://www.copyright.iupui.edu/quickguide.htm>

**Intellectual Property and Copyright Information,** North Carolina State University: overview of copyright laws, exemptions, with explanatory text and various checklists.  
<http://www.lib.ncsu.edu/scc/copyright/copyrightmenu.html>

**The United States Copyright Office:** copyright circulars and publications, press releases, information on pending and current legislation and reports. Instructions on registration, and copyright holder searches.  
<http://lcweb.loc.gov/copyright>

**Frequently Asked Questions (and Answers) About Linking,** Chilling Effects Clearinghouse.  
<http://www.chillingeffects.org/linking/faq.cgi>

**Copyright and Fair Use,** Stanford University: comprehensive, searchable site with full-text of legal resources, links to related sites, publications, mailing lists  
<http://fairuse.stanford.edu>

**Copyright Law and Graduate Research:** requirements for publishing theses  
<http://www.umi.com/hp/Support/DEXplorer/copyright/>

**Coalition for Networked Information (CNI) Electronic Discussion List:**  
listproc@cni.org      subscribe cni-copyright      first name      last name

## **PERMISSIONS RESOURCES**

**Copyright Clearance Center:** seek permissions (formats, republishing), search  
<http://www.copyright.com>

**Various Permissions Online:** books, articles, music, etc.  
<http://www.copylaw.com/permission.html#online>

**Association of American Publishers:** <http://www.publishers.org>

**Authors Registry:** <http://authorsregistry.org>

## **LEGISLATION–TEXTS, COMMENTARY, CHECKLISTS**

**Title 17, U.S.C:** easily searchable by section number, keyword. Cornell University  
<http://www4.law.cornell.edu/uscode/17/>

**Copyright Act of the United States of America,**  
<http://www.copyright.gov/title17/>

**Digital Millennium Copyright Act Summary,** U.S. Copyright Office,  
<http://www.loc.gov/copyright/legislation/dmca.pdf>

**The TEACH Act Finally Becomes Law,** Georgia Harper, University of Texas  
<http://www.utsystem.edu/ogc/intellectualproperty/teachact.htm>

**The TEACH Toolkit, An Online Resource for Understanding Copyright and Distance Education,** Hoon and Drooz  
<http://www.lib.ncsu.edu/scc/legislative/teachkit>

## **INTERACTIVE TUTORIAL /COPYRIGHT QUIZ**

**A Visit to Copyright Bay**