2019

# ORANGE COUNTY COMMUNITY COLLEGE
# LIBRARY
# COPYRIGHT GUIDELINES

## I. Definition of Copyright

The copyright law of the United States (Title 17 of the United States Code,https://www.copyright.gov/title17) governs and protects ideas that have been expressed in a tangible medium of expression. An owner of copyright has the following exclusive rights:

1. The right to reproduce or copy the work;
2. The right to prepare derivative works;
3. The right to distribute copies of the work to the public;
4. In the case of audiovisual works, the right to perform the work publicly;
5. In the case of literary, musical, dramatic and choreographic works, pantomimes and pictorial, graphic or sculptured works; the right to display the work publicly.
6. In the case of sound recordings, to perform the work publicly through digital audio transmission.

## II. Fair Use

Fair Use has been defined as the right to use copyrighted materials in a reasonable manner without consent of the author or copyright owner and without licensing or payment of royalties. Fair use permits teachers, librarians, researchers, scholars, and others to use copyrighted works without authorization from the copyright holder.

Unfortunately, there are no bright line tests or reliable rules for determining whether or not a particular use of another's copyrighted materials is a fair use, even if it is for scholarship or research purposes. The determination is highly fact-specific, and therefore must be made on a case-by-case basis. When determining whether the use of a work in any particular case is a fair use, four non-exclusive factors must be considered:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. The nature of the copyrighted work;
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect of the use upon the potential market for or value of the copyrighted work.

Other factors may be considered when making a fair use determination, but at the minimum, these four factors carry weight in the decision-making process. The Vice President of Academic Affairs, or his/her designee, will preside over infringement questions and/or violations related to library and academic copyright guidelines. In cases where there is disagreement on whether works, posted to online digital

platforms operated by the College, are infringing on copyright, the Vice President of Institutional Advancement, or his/her designee, will make the final determination. If the works in question are determined to be infringing on copyright, these works should be removed as soon as possible.

## III. Copying in the Library

1. **Making copies for patrons**. Section 108 authorizes libraries to make copies requested by patrons. The law is neutral regarding the medium of reproduction; one may make a photocopy, a digital copy or send a fax.

   a. Articles or small parts of works.

      If a patron requests part of a book or an article the library has in its collection, the library can make the copy so long as it complies with the provisions of Section 108(d) as follows:

      - The copy must become the property of the patron;
      - The copy will not be used for a purpose other than private study, scholarship or research;
      - The copy must include the actual copyright notice from the material being copied if available;
      - The library should display and have on its order form a standard "Warning of Copyright."

   b. Whole works:

      If a patron requests a copy of an entire work, the library can make the copy so long as it complies with the provisions of Section 108 (e) as follows:

      - Determine that a copy (even a used copy) cannot be obtained at a "fair price" (i.e. the work is out of print and the price of a used copy is unreasonable);
      - If a copy is made, it must become the property of the patron;
      - The copy will not be used for a purpose other than private study, scholarship or research;
      - The copy must include the actual copyright notice from the material being copied if available;
      - The library should display and include a "Warning of Copyright" on its order form.

   c. Audiovisual news programs

      Section 108(f)(3) permits libraries to make a limited number of copies of audiovisual news programs. Section (f)(3) does not require that the copy become the property of the patron, so the library can retain and lend its copies. Audiovisual news programs include local, regional and national network newscasts, interviews

concerning current events and on-the-spot news coverage of news events. The provision does not apply to news-magazines and/or documentaries.

d. Warning of Copyright

The Contents of the "Warning of Copyright" must state as follows:

**Notice: Warning Concerning Copyright Restrictions**

**The copyright law of the United States (title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.**

**Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.**

**This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.**

2. **Patron use of photocopy machines and computers in the library**. Section 108(f)(1) allows for unsupervised patron use of copying equipment located in the library as long as the library displays a notice that making copies will be subject to copyright law. The following notice should suffice:

**Copyright Notice**

**Copying, displaying and distributing copyrighted works, may infringe the owner's copyright. The University's policy statement on fair use can help you determine whether your use of a copyrighted work may be an infringement. Any use of computer or duplicating facilities by students, faculty or staff for infringing use of copyrighted works is subject to appropriate disciplinary action as well as those civil remedies and criminal penalties provided by federal law.**

## IV. Course Reserves

The SUNY Orange Library Course Reserves Guidelines are designed to comply with the legal requirements of Title 17 of the United States Code and prohibit copying not allowed by the law, Fair Use Guidelines, license agreements or the permission of the copyright holder.

When faculty submit items to be reserved, they should provide the author's name, title of the work, and copyright statement, if there is one. Reserve materials are available only for the semester in which the class is taught. Any uses beyond the semester require copyright permission. The total amount of material on reserve for a class should be a small proportion of the total assigned reading for that class when invoking fair use.

The following items may be placed on reserve for one semester only:

- One chapter of a book (or less than 10% if there are 9 or fewer chapters)
- One article from a periodical or newspaper
- One short story, short essay or short poem, provided that it is not the heart of the workOne chart, graph, diagram, cartoon or picture from a book, periodical or newspaper
- For the academic year, only two copies of photocopied material for every 25 students enrolled in a class, or any fraction thereof, but no more than 5 copies per class.

Permission is needed for the following, which generally do not fall within Fair Use Guidelines:

- Material described above kept on reserve for more than one semester
- More than one chapter or article from a book, or more than one selection from a collection of essays or poems
- Anthologies created by photocopying copyrighted materials.

The above parameters may be exceeded if a purpose of use argument can be made that does not impinge on the heart of the work limitation. A copyright challenge form needs to be completed in this instance.

1. **Textbooks**

   Required textbooks cannot be assumed to fall within the guidelines of Fair Use when being placed on reserve. The following will be applied to textbooks:

   - Courtesy, complimentary or promotional copies of textbooks will not be placed on reserve unless accompanied by specific written permission from the copyright holder. This document should include the time period covered, the

ISBN, title, author, and edition, and state the nature of permitted in-library use.

- Textbook copies owned by the instructor or textbooks whose copyright permission falls under the provisions of Fair Use may be placed on reserve for one semester. If needed longer, copyright permission must be obtained by the instructor. Purchased textbooks may be donated to the library.

The following types of textbooks may be refused unless permission is obtained:

- Those clearly marked as not for sale/resale, complementary or review copies.
- Those with copyright statements on the title page verso that prohibit further dissemination.

2. **Original material**:
   Original material such as exams or study guides may be placed on reserve without restriction.

3. **Other materials:**
   Personal copies except videos, CDs, and software, may be placed on reserve for one semester.
   Library copies will be reviewed each semester and returned to the collection annually.

   a. **Personal Copies of Recordings:**
      - Personal copies of commercially made recordings may be used for one semester without obtaining permission. One backup copy may be made and circulated.
      - Recordings of original broadcasts (e.g. ABC News) may be used for 10 days after broadcast without obtaining permission. They must be viewed in their original format. Website use, licensing agreements and/or terms of use may restrict this privilege as well as copying.
      - Videotapes Recordings of instructional television programs may be used for one semester without obtaining permission. Website use, licensing agreements and/or terms of use may restrict this privilege.

   b. **Personal Copies of other Audio-Visual material**

One duplicate of an original purchased copy may be made and placed on reserve. Software license terms and instructions must be included.

4. **Other General Guidelines**:
   - Library staff may remove and return any non-compliant course reserve material at any time.
   - Library staff will remove old editions of textbooks between semesters. If a department or instructor wishes to have an old edition remain available, a label must be affixed to the previous edition that describes the utility of the item.
   - Faculty who wish to challenge any aspect of these guidelines may complete a Copyright Challenge Form for each disputed item. The signer of this form will be accepting responsibility for any violation of copyright law.
   - All reserve material will be labeled as follows:
     Copyright Law of the United States (Title 17, United States Code) governs the photocopying or reproduction of copyrighted material. The user of this work is responsible for determining the lawful use of this material and liable for any copyright infringement.

## V. Interlibrary Loan

The SUNY Orange ILL service is governed by the conditions set by the U.S. Copyright Law, the ALA Interlibrary Loan Code, CONTU (The National Commission on New Technological Uses of Copyrighted Works), regional Interlibrary Loan agreements, and the regulations set by individual lending libraries.

The library may be either a requestor or responder in the interlibrary loan context. Requestors are responsible for compliance with copyright law and, where applicable, the CONTU Guidelines. Responders need only to ask whether the requestor has complied.

1. **CONTU guidelines**
   Under CONTU, the library can request five copies of an article, book chapter or other portion of a work or five articles from a periodical published in the last five years per calendar year. This does not include items owned by the library that are currently unavailable or items from which the library has an active print subscription.

   **Suggestion of Five**
   Under CONTU, the library can request five copies of an article, book chapter or other portion of a work or five articles from a periodical published in the last five years per calendar year. If more than five recent articles have been ordered in a given year,

copyright fees will need to be paid for additional item(s). SUNY Orange Libraries require that the user pay these charges. A requestor will be contacted prior to fulfillment in this instance.

**Rule of Two**

Multiple requests from a single-issue periodical or monograph by the same individual may require payment of copyright fees. SUNY Orange Libraries require that the user pay these charges. A requestor will be contacted prior to fulfillment in this instance.

## VI. Lending

The "First Sale Doctrine" allows libraries to lend materials. Once a library has purchased any print item, recording, or piece of computer software, the library may lend the legally obtained copy without the permission of the copyright owner. The First Sale Doctrine applies to materials purchased for the library or by the library. For books and other print materials, the library may lend the original as many times as needed.

## VII. Computers and Software

Copying computer software without permission is a violation of the Copyright Act of 1976. Under the Act, computer programs are protected like other literary works. Section 117 of the Copyright Act clearly prohibits the unauthorized duplication of a computer program for use by anyone other than the owner of a master copy or license.

In addition, these guidelines are to be followed:

1. **Loaning Software**
   - Copyright notice placed on a software label should not be obscured.
   - Licensing terms, if any, should be circulated with the software package.
   - The Library will not be liable for infringement committed by borrowers.
2. **Archival Copies**
   - Libraries may lawfully make an archival copy of a copyrighted program under the following conditions:
     (1) One copy is made;
     (2) The archival copy is stored
     (3) If possession of the original ceases to be lawful, the archival copy must be destroyed or transferred along with the original program;
     (4) Copyright notice appears on the copy.
   - The original may be kept for archival purposes and the "archival copy" circulated.

- Only one copy – either the original or the archival – may be used or circulated at any given time.
- If the circulating copy is destroyed, another "archival" copy may be made.
- If the circulating copy is stolen, the copyright owner should be consulted before circulating or using the "archival" copy.

**3. Library and Classroom Use**

- Licensing restrictions, if any, should be observed.
- If only one program is owned under license, ordinarily it may be used on only one machine at a time.
- Most licenses do not permit a single program to be loaded into a computer that can be accessed by several different computers for simultaneous use.
- If the machine is capable of being used by a patron to make a copy of a program, a warning should be posted on the machine, such as, "Many computer programs are protected by copyright, 17 U.S.C. 101. Unauthorized copying may be prohibited by law."

## VIII. How to Obtain Permission

When a use of photocopied material requires that you request permission, you should communicate complete and accurate information to the copyright owner. The American Association of Publishers suggests that the following information be included in a permission request letter to the publisher in order to expedite the process:

1. Title, author and/or editor, and edition of materials to be duplicated.
2. Exact material to be used, giving amount, page numbers, chapters and, if possible, a photocopy of the material.
3. Number of copies to be made.
4. Use to be made of duplicated materials.
5. Form of distribution (classroom, newsletter, etc.).
6. Whether or not the material is to be sold.
7. Type of reprint (ditto, photography, offset, typeset).

The request should be sent, together with a self-addressed return envelope, to the permissions department of the publisher in question.

The process of granting permission requires time for the publisher to review the status of the copyright and to evaluate the nature of the request. It is advisable, therefore, to allow enough lead time to obtain permission before the materials are needed. In some instances, the publisher may assess a fee for the permission. It is not appropriate to pass this fee on to the students who receive copies of the photocopied material.

Obtaining copyright permission or a licensing agreement can be a long and complicated process. The resources listed below may help.

- Copyright Clearance Center
  The CCC acts on behalf of copyright holders to grant permissions and collect fees.
  21 Congress Street
  Salem, MA 01970
  www.copyright.com

- Creative Commons Search
  http://search.creativecommons.org/
  This search engine offers information on permitted use of materials.

- Library subscription databases have licensing agreements that can be reviewed upon request. Terms or conditions of use often outline permitted uses and are usually universal to all users of a site or service.

**Sites that include searchable, but not comprehensive, databases**

- U.S. Copyright Office
  www.copyright.gov

- Stanford University Copyright Renewal Database
  http://collections.stanford.edu/copyrightrenewals/
  US Class A book renewals requested from 1950 and 1992 for books published in the US between 1923 and 1963.

- WATCH
  http://tyler.hrc.utexas.edu/
  Look here for copyright holder contact information. The WATCH copyright file is a joint project of the Harry Ransom Humanities Research Center at The University of Texas at Austin and the University of Reading Library, Reading, England.

**Songs**

- ASCAP
  www.ascap.com
  Click on ACE Repertory Search for songs licensed by ASCAP in the U.S.

- BMI
  http://repertoire.bmi.com

- SESAC
  https://www.sesac.com/#/repertory/search
  Search the SESAC repertory database.