

What are the Copyright Laws and How Do They Apply to Me as a Student, Educator or Librarian?

Much of this guide was prepared from the document "Reproduction of Copyrighted Works by Educators and Librarians," published by the United State Copyright Office, November 2009.

Introduction: Morality, Ethics, and Laws

Morality and legal codes are often divorced from each other in modern-day politics. It has been expressed more than once in public conversations that morality does not possess the right to have a seat at the governing table. The argument states that laws may govern the social transactions of all the people, but no one has the right to impose a moral code on another. Such secular legalism is a contradiction, however, for legal codes express the morals of the society which creates them through the intermediary of ethics. Ethics are the practical expressions of societal morals: if a society's morals value a strong family, then ethical standards will encourage marriage and parental rights; if a society's morals value the dignity of all humans then ethical behavior determines that even slaves and widows deserve respect and compassion; if a society's morals value strong warriors then ethical standards will tend to denigrate the weak and sick while upholding the strong and fearless. Once societies grow they find that ethical standards may have been enough for clans and tight-knit groups of small nations, but such standards need to be codified into enforceable statutes in order for the society to grow larger without growing splintered. Laws are thus born, such as the Torah of the Israelites and the Code of Hammurabi.

The laws of the United States, for instance, were created out of two schools of ethics: one, those developed in the Enlightenment period which taught that man has the right to rule himself -- and that imposed rule is an evil which distorts the inherent beauty of man's soul; and two, the Judeo-Christian model which taught that man has a Creator Who created a Divine Law that rules eternity, seen in the Natural Law that rules the created universe including mankind, which is then to be expressed by each society in national laws composed of individual persons who are responsible for themselves. A portion of the ethics expressed in the early documents was the idea that each person (often, but not always, defined as white, male, and landowning) had the right to own and control property, without being subjected to the demands of a capricious ruler but rather subjected to the benevolence of the Creator. It was to such Enlightenment and Judeo-Christian ethics, and ultimately morals, that created the legal framework of our nation. A different set of ethics would have created a different set of laws, as we see rather strikingly in oriental and communist nations today (where the individual person's rights are subjected to the needs of the society), fascist and nationalistic nations of the 20th century (some of which legalized the persecution and extermination of those who were opposed to the ideals of the rulers such as Jews, Catholics, and the handicapped), and empires throughout previous centuries (which subjected the indigenous people to the demands of the conquerors, legalizing slavery and burdensome taxation, for instance).

The morals and ethics that served as the foundation of America's legal system are inescapable -- legal codes may change over time, but this change reflects a change in societal ethics and morals, not a simple change in legal wording. Within the words of laws, codes, and judicial judgments we can trace the ethics, and ultimately the morals, upon which they are built. In our case here, those laws, codes, and judicial judgments which touch on creations of the mind in writings, poetry, music, and art express the idea that each person is honored for his or her intellectual contribution to society. Such expressions are to be properly respected and protected from undo harm and damage because these creations are expressions of the person, and while unique from land and houses, deserve ethical protection. Exactly how such ethics are expressed in practical terms is known as Intellectual Property Rights.

The Ethics of Copyright: Protecting Intellectual Property Rights

We must, therefore, remember that articles, books, movies, music, and works of art are the products of their creators. Some would say that these are, in fact, more than just products but are little pieces of the creators -- some of the author's soul lies in the words that he writes, some of the producer's talent in the movies she produces, and some of the artist's inner emotions and dreams in the music and artwork he creates. As we read, watch, listen, and view we are looking at something more than just an object -- it is, in fact, a subject: the person behind the work. And as we would respect the person if he or she were standing before us, so must we respect those works of mind and art in which we can dimly see that person, lest we dishonor through theft and disrespect.

Laws regarding copyright, patents, and trademarks establish the legal guidelines whereby such works are protected under the concept of Intellectual Property Rights. This concept recognizes that the creations of the mind are entitled to equal protection afforded to physical property such as houses, automobiles, jewelry, and other tangible goods.

The United States has created a set of guidelines to ensure the proper balance between protection for the creator and the needs of the public, students, educators, and libraries. But these are guidelines, not codified laws that delineate every possible situation and the corresponding rules and penalties. The U.S. Congress and the U.S. Copyright Office recognize the vast number of possible situations that ever-changing technologies create, and so have deliberately chosen not to create simple, hard-and-fast laws that are easy to follow but quickly out-dated. Instead, guidelines have been created that are subject to the interpretation of the judicial branch which provide, at best, the minimum standards and reasons for such standards -- the "spirit of the law" rather than exact "letters of the law."

Copyright and Public Domain Made Simple

The length of time a work remains protected by copyright in the United States varies, depending on when the item was created or published with a copyright notice. Professor Laura N. Gasaway, an Associate Dean and Professor of Law at the University of North Carolina, has created a chart that helps simply this, slightly modified here (Gasaway, n.d.):

Date of Publication	Term of Copyright Protection
Before 1923	None, in the public domain.
1923 - 1963	28 years, plus a possible 67 years if renewed. If not renewed, the work is now in the public domain.
1964-1977	67 years.
After January 1, 1978	Life of the creator + 70 years. If the work is of corporate authorship: 95 years after publication or 120 years from creation. Anonymous and pseudonymous works: 120 years from creation.

Note: the law treats unpublished works and those that were created but published in different eras (as delineated in this chart) as another category, but the essence of their protection remains Life + 70 years.

What Can a Student, Educator, Library, or School Copy?

Copyright protection is fairly strict when copies are made in the interest of profit, but those in the non-profit educational and research fields are afforded more leeway under a concept known as Fair Use.

Fair Use has never been clearly defined, but, in essence, it states that a small amount of a work can be copied and re-published for education, used as part of research, created for private study, or made for students in a course. But such permission is not unlimited nor recurring; rather there are specific guidelines that may be more restrictive than one might at first think.

In order to make copies of copyrighted materials under the guise of Fair Use, one must first examine the four factors that are used to determine if one's activity is covered (U.S. Copyright Office, 2009):

- (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.

As the legislative and judicial branches have not created a clear rule that one can apply to determine if one can copy a work under the guise of Fair Use, one must judge one's own intentions and impact. The more likely that one's copying of works agrees with these concepts then the more likely one can make legal copies:

- (1) that one will use the copy for educational, private, or research purposes;
- (2) that the work is fact (versus imaginative);
- (3) that 10% or less of the work is copied, and
- (4) that the work is only copied for one incident (not for multiple projects or semesters) and that this copy is presented in a limited setting not open to the public.

A library or archive may, in special circumstances, make a single copy of a work that it owns but has been damaged, lost, or stolen. And a "reserve" digital copy may be made available of an extant copy the library owns, but this copy cannot be able to be taken outside of the library -- such as posting it on a server where the file could be accessed by students in their dorm rooms or off-campus.

Here is a basic guideline for written works, recorded music, and sheet music:

Who	Type of Work and/or Amount of the Work Copied	Restrictions and Purpose Required
Student	Small portion of the work, 10% or less	1) Must be for private study or research purposes 2) The copy cannot be made available to other students
	An entire work that is out of print	This must be made by a library or archive for the student: see under Library for the restrictions
Teacher	Small portion of the work, 10% or less of the total work	1) Illustration for a lesson 2) Used only for that semester, not subsequent semesters
	Single copy of an entire chapter from a book, complete article, short story, short poem (250 words or less), chart-graph-illustration	Copied or requested by the teacher for research or teaching purposes
	Multiple copies of a work for students in a class: short poem (250 words or less), 10% or less of work, chart-graph	1) Source of request: Requested by the teacher 2) Spontaneity: Request is too close to the needed time frame such that it would be unreasonable to expect the publisher of the work to grant permission in time 3) Brevity: <ul style="list-style-type: none"> • small portion of a large work (10% or less) • entire prose work if it is short (less than 2,500 words) • entire poem if less than 250 words, or • 250 word portion of a long poem 4) Cumulative Effect: <ul style="list-style-type: none"> • copying is for only one course • no more than one entire work from the same author • no more than three works from the same collective work or periodical (encyclopedia, anthology, journal), and • no more than nine total copies of any works 5) Each copy/course packet includes applicable copyright notices for the works
	Sheet music - entire work	1) Replacement of owned copies in an emergency for a performance 2) Provided that replacement copies will be purchase as soon as possible afterward
	Sheet music - 10% or less	2) Educational purposes 3) The portions copied are not entire portions of the work that can be performed as stand-alone sections 4) The total must be 10% or less of the entire work 5) The copying must not be intended as a substitute for the purchase of the music
Recordings of student performances	One copy may be created for evaluation purposes and kept by the school or the teacher	

	Entire recorded works of copyrighted recordings	<ol style="list-style-type: none"> 1) An original copy must be owned by the school or teacher 2) The copy is made for the purpose of student examinations or exercises
	Broadcast programs	<ol style="list-style-type: none"> 1) The institution must be non-profit 2) The teacher or the school can make the copies, but schools can only make the copies if the teacher requests, not in anticipation thereof 3) The broadcast must be intended for the public at no-charge (pay-per-view shows are not covered) 4) The copies can only be used twice within 10 days of the broadcast 5) Copies can be reviewed by the teachers for up to 45 days after the broadcast, but only for evaluative purposes -- they cannot be shown to students for any reason without permission of the copyright owner 6) The copies must include the appropriate copyright notice 7) The copies must be destroyed after 45 days
Library and Archives	Only a portion of the entire work	Reproducing the damaged portion of a work the library owns
	The entire work - due to damage	<ol style="list-style-type: none"> 1) Library must own a copy that has been damaged, is deteriorating, lost, or stolen 2) The cost to replace it is unreasonably expensive
	The entire work - if original copy is fine	<ol style="list-style-type: none"> 1) The copies are not made as a means to avoid buying further copies 2) The collections of the library are either open to the public or, if a research-only institute, to researchers not directly connected to the institute 3) The copies include the appropriate copyright notice
	The entire work in digital format	<ol style="list-style-type: none"> 1) The library or archive must own an original copy 2) The copy is available for access only within the physical building of the library -- it is not transportable
	An entire work that is out of print, not owned by the library, copied for students	<ol style="list-style-type: none"> 1) An original work cannot be obtained at a reasonable price 2) An original work cannot be easily located elsewhere (such as through Inter Library Loan) 3) The copy becomes the property of the student or person requesting the copy 4) The library or archive has no reason to believe that the copy is intended for any purpose other than education, personal study, or research 5) Appropriate copyright notices are displayed in the area where such requests are made and on any forms used for such requests
	Allowing students to make copies, such as by providing copy machines	The library is not liable for copyright infringements perpetrated by students or patrons, providing that proper copyright notices are displayed near the copy machines (provided below)

What Cannot be Done

- Students cannot create copies of portions of works and then make them available to other students.
- Students cannot make copies of works on a library's copy machine if such copying violates the principles of Fair Use.
- Administration cannot create copies of portions of works for a class, only the teacher can.
- No one can make recurring copies of works for future courses.
 - Copies of 10% or less of works can be made for one class if there is not enough time to contact the publishers to obtain permission, but only for one class -- not for any following semesters.
 - If the same portions of works will need to be copied again, permission must be obtained for all subsequent classes.
- Libraries and archives cannot make digital copies that are portable: "any such copy or phonorecord that is reproduced in digital format is not made available to the public in that format outside the premises of the library or archives in lawful possession of such copy" (U.S. Copyright Office, 2009, p. 12).
- Libraries cannot make copies of works for students that the teacher has assigned as reading.
 - The teacher needs to make the request on behalf of the students, and, as mentioned above, can only make such a request once, when the time between the request and the start of the course is too short a time to expect the publisher to respond with a grant of permission.

Copyright Notice That is to be Displayed

The notice that is to be displayed is a verbatim reproduction of this notice, in at least 18-point font posted in a prominent place where a person using a copy machine can easily see it, on heavy paper or some other durable material Copyright Office, 2009, p. 20):

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.

Penalties for Violation

There are two categories of damages that the courts can award which can constitute quite a hefty penalty:

Actual damages: those damages incurred by the owner of the copyright by the violation, plus

Any profits collected by the person who violated the copyright as a result of the violation.

--OR--

Statutory damages: between \$750 and \$30,000 per work violated.

If, however, the court finds that the person who violated the copyright did so with full knowledge that what he or she was doing was, in fact, illegal, the damages can be up to \$150,000 per work.

If the court finds that the person who violated the copyright was ignorant to the fact that it was illegal, the court can lower the minimum damage amount to \$200 per work.

This document is intended to be used as a guide to the law, and is not intended to be used as legal counsel. Students, educators, librarians, and administration are encouraged to examine the United States Code, title 17 for official guidelines.

References cited:

Gasaway, L. (n.d.). When U.S. works pass into the public domain. Retrieved from <http://www.unc.edu/~uncclng/public-d.htm>

United States Copyright Office. (2009). *Reproduction of Copyrighted Works by Educators and Librarians* (Circular 21). Washington, DC: U.S. Copyright Office. Retrieved from <http://www.copyright.gov/circs/circ21.pdf>

Prepared by David J. Harrison, M.A., Educational Technologist for Holy Apostles College and Seminary, Adjunct Professor in the Department of Education at Webster University