

## Your Guide to Copyright

**DISCLAIMER:** The copyright policy as follows is merely a statement of the Library policy surrounding the guidelines for copyright law and fair usage. It is not a substitute for legal advice, nor is it a complete representation of all Federal governances surrounding copyright law. For detailed legal advice regarding these areas, contact a lawyer.

### Policy

Sage Library complies with *The Copyright Act 17 U.S.C.A. § 101 et seq.*, which covers the usage of copyrighted materials for educational purposes.

### What is copyright?

Copyright is a form of protection provided by the laws of the United States to the authors of “original works of authorship” that are fixed in a tangible form of expression. An original work of authorship is a work that is independently created by a human author and possesses at least some minimal degree of creativity. See [www.copyright.gov](http://www.copyright.gov) for more information.

- All works published in the United States before January 1, 1923, are in the “public domain.” The term “public domain” refers to creative materials that are not protected by intellectual property laws such as copyright, trademark, or patent laws. The public owns these works, not an individual author or artist. Anyone can use a public domain work without obtaining permission, but no one can ever own it.
- All later works should be presumed to be under copyright. The absence of a copyright notice, typically reflected by the symbol ©, does not indicate that the item is not under copyright.

### What is copyright infringement?

As a general matter, copyright infringement occurs when a copyrighted work is reproduced, distributed, performed, publicly displayed, or made into a derivative work without the permission of the copyright owner.

## What is fair use?

Fair use is a legal doctrine that promotes freedom of expression by permitting the unlicensed use of copyright-protected works in certain circumstances. [17 U.S.C. §107](#) provides the statutory framework for determining whether something is a fair use and identifies certain types of uses—such as criticism, comment, news reporting, teaching, scholarship, and research—as examples of activities that may qualify as fair use. There are four factors that are taken in totality in deciding whether or not something is fair use.

1. ***Purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes:*** Courts look at how the party claiming fair use is using the copyrighted work, and are more likely to find that nonprofit educational and noncommercial uses are fair. This does not mean, however, that all nonprofit education and noncommercial uses are fair and all commercial uses are not fair; instead, courts will balance the purpose and character of the use against the other factors below. Additionally, “transformative” uses are more likely to be considered fair. Transformative uses are those that add something new, with a further purpose or different character, and do not substitute for the original use of the work.
2. ***Nature of the copyrighted work:*** This factor analyzes the degree to which the work that was used relates to copyright’s purpose of encouraging creative expression. Thus, using a more creative or imaginative work (such as a novel, movie, or song) is less likely to support a claim of a fair use than using a factual work (such as a technical article or news item). In addition, use of an unpublished work is less likely to be considered fair.
3. ***Amount and substantiality of the portion used in relation to the copyrighted work as a whole:*** Under this factor, courts look at both the quantity and quality of the copyrighted material that was used. If the use includes a large portion of the copyrighted work, fair use is less likely to be found; if the use employs only a small amount of copyrighted material, fair use is more likely. That said, some courts have found use of an entire work to be fair under certain circumstances. And in other contexts, using even a small amount of a copyrighted work was determined not to be fair because the selection was an important part—or the “heart”—of the work.
4. ***Effect of the use upon the potential market for or value of the copyrighted work:*** Here, courts review whether, and to what extent, the unlicensed use harms the existing or future market for the copyright owner’s original work. In assessing this factor, courts consider whether the use is hurting the current market for the original work (for example, by displacing sales of the original) and/or whether the use could cause substantial harm if it were to become widespread.

## **Reproduction of copyrighted material**

Libraries and archives qualify for special provisions to copyright usage rights as governed by *17 U.S. Code § 108*. Under section (d):

The rights of reproduction and distribution under this section apply to a copy, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, of no more than one article or other contribution to a copyrighted collection or periodical issue, or to a copy or phonorecord of a small part of any other copyrighted work.

For more detailed information about scope of copyright and subject matter, [see 17 U.S. Code § 108](#).

## **Copyright and Photocopying**

The number of photocopied items reserved for any one course will be limited by fair-use standards. Photocopies may not be used as a substitute for the purchase of periodicals, publishers' reprints, or books. Nor may they be used in lieu of published anthologies and similar collections, whether the items are reserved collectively or separately.

In general, users may copy or scan two articles in one journal or one chapters in a book, constituting not more than 10% of the total work.

## **Unsupervised Copying in the Library**

Section *108(f)(1)* does not hold the library responsible for infringement committed by patrons using copiers located in the library, as long as the library displays a notice on reproduction equipment that making such copies is subject to copyright law. The notice includes the following:

The copyright law of the United States (*Title 17, United States Code*) governs the making of photocopies or other reproductions of copyrighted material. Copying, displaying and distributing copyrighted works, may infringe the owner's copyright. If a user makes reproductions of copyrighted works and later uses the reproductions for purposes in excess of "fair use", that user may be subject to the civil and criminal penalties of federal law.

## **Copyright and Course Reserves**

- Electronic course reserves service, such as provided in Sakai, is an extension of traditional print-based library services and will be provided in a manner that respects Fair Use rights, the rights of copyright holders, and current copyright law.

- All materials will be placed on reserve at the request of faculty only for the noncommercial, educational use of students.
- All materials placed on reserve will be reproduced from copies lawfully obtained by either the requesting faculty member or the Library.
- Only limited amounts of a copyright-protected work may be reproduced as e-reserves. All e-reserve files produced by staff will include a notice of copyright on the first page, indicating that they may be subject to copyright restrictions.
- Reserve requests for books will be limited to the personal copies supplied by faculty members and to titles in the Library collection. If a requested book is not available, the Library will attempt to purchase it in a timely manner. Faculty should note, however, that the purchasing process frequently takes ten weeks or more, and that the delivery of all titles is not guaranteed. Periodicals and books obtained through interlibrary loan (ILL) may not be placed on reserve.

### General Guidelines to Course Reserves

- Materials placed on reserve will be made available for students enrolled in that specific course and faculty **only while the requesting instructor is actually teaching the course**, and will be removed after the course is no longer in session.
- Book selections placed on electronic reserve from works under copyright will not exceed more than **1 chapter from a single work** with 10 or more chapters **or 10% from a work** with 10 chapters or fewer. If short excerpts are taken from several chapters, the amount should be equivalent to the average chapter length of a book with 10 or more chapters or 10% from a work with 10 chapters or less.
- No more than **two articles per issue** of a periodical will be placed on electronic reserve. If an instructor needs more than this limit, the Library will investigate options including but not limited to obtaining the required permissions and/or licenses or assisting faculty in identifying alternative resources.
- The above limitations are cumulative over the course of the semester.
- E-reserves that are reactivated in subsequent semesters for the same course/ instructor may require copyright permission. Copyright permission will be sought by staff through the [Copyright Clearance Center](#). Materials for which copyright permission is unavailable may be removed from reserve.
- Examples of reprinted reserve materials for which copyright permission is not generally required:  
government publications, exams and notes furnished by the course instructor, material for which the instructor holds the copyright, a single journal or magazine article used for one semester, a single book chapter used for one semester
- Examples of reprinted reserve materials for which copyright permission is generally required:  
a single journal or magazine article used for more than one semester, a single book chapter used for more than one semester, multiple articles from a single

journal, multiple chapters from a single book excerpts from workbooks or other “consumable” publications.

- Please remind students enrolled in a course about the limitations of copyright, and they must not further distribute copies to others.

*Copyright law as it relates to course reserves is continually being reevaluated by the courts. The Library will review subsequent legislation as it becomes available. These guidelines may be changed as case law continues to grow. Contact a lawyer or the [Copyright Clearance Center](#) for more information*

### **Further Information**

Association of Research Libraries' [Code of Best Practices](#)

<https://www.arl.org/wp-content/uploads/2014/01/code-of-best-practices-fair-use.pdf>

Columbia University's [Fair Use Checklist](#)

<https://copyright.columbia.edu/content/dam/copyright/Precedent%20Docs/fairusechecklist.pdf>

Have more questions? Contact Sage Library:  
Sage.Library@nbts.edu or 732-247-5243