



AP 3710 COPYRIGHT COMPLIANCE

References:

Education Code Sections 72207 and 81459;
17 U.S. Code Sections 107, 201, and 504

Assistance with Copyright Compliance

There shall be a District Copyright Committee composed of at least three members including the Director of the Library, the dean responsible for instructional technology, and a third member appointed by the Superintendent/President to assist with interpretation of BP 3710 Copyright Compliance and AP 3710 Copyright Compliance. Employees may contact the Copyright Committee at **copyright@sbcc.edu** with questions about copyright compliance. Additional resources and guides will be made available on the Santa Barbara City College Copyright web page at <http://www.sbcc.edu/copyright>. Third party concerns about possible infringement by college employees or students should be directed to the Copyright Committee or to the Superintendent/President's Office.

Definitions and Explanation

WHAT IS COPYRIGHT?

Copyright is an area of law that provides creators and distributors of creative works with an incentive to share their works by granting them the right to be compensated when others use those works in certain ways. Specific rights are granted to the creators of creative works in the U.S. Copyright Act (Title 17, U.S. Code). If employees are not copyright holders for a particular work, as determined by the law, they must ordinarily obtain copyright permission prior to reusing or reproducing that work. However, there are some specific exceptions in the Copyright Act for certain academic uses, and permission is never required for certain other actions, such as reading or borrowing original literary works or photographs from a library collection.

WHAT IS PROTECTED BY COPYRIGHT?

The rights granted by the Copyright Act are intended to benefit "authors" of "original works of authorship," including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations. This means that virtually any creative work is almost certainly protected by copyright. These works include:



- books, magazines, journals, newsletters, maps, charts, photographs, graphic materials, and other printed materials;
- unpublished materials, such as analysts' and consultants' reports; and
- non-print materials, including electronic content, computer programs and other software, sound recordings, motion pictures, video files, sculptures, and other artistic works.

Among the exclusive rights granted to those "authors" are the rights to reproduce, distribute, publicly perform, and publicly display their works.

These rights provide copyright holders control over the use of their creations and an ability to benefit, monetarily and otherwise, from the use of their works. Copyright also protects the right to "make a derivative work," such as a movie from a book; the right to include a work in a collective work, such as publishing an article in a book or journal; and the rights of attribution and integrity for "authors" of certain works of visual art. Copyright law does not protect ideas, data, or facts.

In the U.S., the general rule of copyright duration for a work created on or after January 1, 1978 is the author's life plus 70 years after the author's death. This is often referred to as "life-plus-70." Works created by companies or other types of organizations generally have a copyright term of 95 years.

For more information on copyright duration, visit: <http://www.copyright.gov/circs/>

WHAT IS FAIR USE?

A provision for fair use is found in Section 107 of the Copyright Act. Under the fair use provision, a reproduction of someone else's copyright-protected work is likely to be considered fair if it is used for one of the following purposes: criticism, comment, news reporting, teaching, scholarship, or research. If the reproduction is for one of these purposes, a determination as to whether the reproduction is fair use must be made based upon four factors:



1. The purpose and character of use (principally, whether for commercial or nonprofit educational use);

↔ **Fair**

Not Fair ↔

| | | |
|--------------------------------------|---|------------|
| Nonprofit Educational Personal | Criticism Commentary News reporting parody | Commercial |
|--------------------------------------|---|------------|

2. The nature of the copyright-protected work,

↔ **Fair**

Not Fair ↔

| | | |
|----------------|--------------------------------------|-------------------------|
| Fact Published | A mixture of fact and imaginative | Imaginative Unpublished |
|----------------|--------------------------------------|-------------------------|

3. The amount and substantiality of the portion used; and

↔ **Fair**

Not Fair ↔

| | | |
|--------------|--|--------------------------|
| Small amount | | More than a usual amount |
|--------------|--|--------------------------|

4. The effect of the use being evaluated upon the potential market for or value of the copyright-protected work.

↔ **Fair**

Not Fair ↔

| | | |
|---|---|--|
| After evaluation of the first three factors, the proposed use is tipping toward fair use. | Original is out of print or otherwise unavailable. No ready market for permission. Copyright owner is unidentifiable. | Competes with (takes away sales from) the original. Avoids payment for permission (royalties) in an established permissions market. |
|---|---|--|

No one factor alone determines a person's right to use a copyrighted work without permission. They are weighted measures and one may be more applicable than another, depending on the circumstances. The source of the tables above and additional discussion and analysis are available at:

<https://www.utsystem.edu/offices/general-counsel/intellectual-property>

or use the Fair Use Checklist at:

<https://www.copyright.com/learn/media-download/copyright-on-campus>



Fair use is an ambiguous concept and the law does not state exactly what uses of a copyrighted work will be considered fair uses under the law and may therefore be used without obtaining permission. As such, individuals who are not lawyers may often need to be interpreters of the law in everyday circumstances, and answers as to how much reproduction may be considered fair use often remain unclear. The bottom line is that fair use requires a very circumstance-specific analysis as to whether a particular use or reuse of a work may indeed be considered fair use.

The copyright act provides a very important defense for employees of a nonprofit educational institution who make a reasonable, good faith determination that their proposed use of copyrighted materials is a fair use. If such employees, acting within the scope of their employment, made a reasonable, good-faith decision that their proposed use of copyrighted materials was a fair use under the copyright act, a court, later finding that they had infringed, must remit statutory damages. The key is that the infringer must have believed, and have had reasonable grounds for believing, the use was a fair one. Keeping documentation of that analysis is advisable.

TYPES OF USE

Classroom Handouts

Based on Santa Barbara City College's fair use analysis, classroom handouts fall into two categories: one that requires permission and one that does not. If the handout is a new work for which the employee could not reasonably be expected to obtain permission in a timely manner and the decision to use the work was spontaneous, the employee may use that work without obtaining permission. However, if the handout is planned in advance, repeated from semester to semester, or involves works that have existed long enough that one could reasonably be expected to obtain copyright permission in advance; the employee must obtain copyright permission to use the work.

Coursepacks

All articles, chapters, and other individual works in any print or electronic coursepack require copyright permission. Copyright permission for coursepacks is usually granted by the academic period. To reuse a coursepack in subsequent academic periods (e.g.: semester, quarter, trimester, etc.), permission will need to be obtained again. Many copyright holders provide time-sensitive permission because their own rights may be time-sensitive and could be transferred to different copyright holders at any time.



When ordering coursepacks, it is important to clarify who will obtain permission for the coursepack—the bookstore, the faculty member, or a member of the administrative staff. Deferring responsibility for copyright permission will not provide protection against a claim of copyright infringement.

Reserves

If the Santa Barbara City College Luria Library owns a copy of a publication, with the exception of consumable workbooks, the library may place that copy on reserve without obtaining copyright permission. The following guidelines pertain to copied reserve (print and electronic) materials:

1. Reserve materials are limited to (1) single articles or chapters, several charts, graphs or illustrations, or other small parts of a work; (2) a small part of the materials required for the course; and, (3) copies of materials that a faculty member or the library already possesses legally (i.e., by purchase, license, fair use, interlibrary loan, etc.).
2. Reserve materials should include (1) appropriate citations and attributions to the source; and, (2) a Section 108(f)(1) copyright notice.
3. In the case of electronic reserves, access will be limited to students enrolled in the class and administrative staff as needed; access is terminated at the end of the class term.
4. Faculty must obtain copyright permission for materials that will be used repeatedly by the same instructor for the same class.

Photocopying in the Luria Library

It is permissible to photocopy copyright-protected works in the Santa Barbara City College Luria Library without obtaining permission from the copyright owner, under the following circumstances:

- **Library user requests for articles and short excerpts.** At the request of a library user or another library on behalf of a library user, the Santa Barbara City College Luria Library may make one reproduction of an article from a periodical or a small part of any other work. The reproduction must become the property of the library user, and the library must have no reason to believe that the reproduction will be used for purposes other than private study, scholarship, and research. As recommended by Section 108 of the Copyright Act, the library must display the U.S. Copyright Office Register's Notice at the place library users make their reproduction requests to the library.



- **Archival reproductions of unpublished works.** Up to three reproductions of any unpublished work may be made for preservation or security or for deposit for research use in another library or archive. This may be a photocopy or digital reproduction. If it is a digital reproduction, the reproduction may not be made available to the public outside the library or archive premises. Prior to receiving any of the three reproductions permitted under this provision from another library or archive, the Santa Barbara City College Luria Library or archive must make a reasonable effort to purchase a new replacement at a fair price. The reproducing library or archive must also own the work in its collection.
- **Replacement of lost, damaged, or obsolete copies.** The Santa Barbara City College Luria Library may make up to three reproductions, including digital reproductions, of a published work that is lost, stolen, damaged, deteriorating, or stored in an obsolete format. Any digital reproductions must be kept within the confines of the library (that is, available on its computer but not placed on a public network).
- **Library user requests for entire works.** One reproduction of an entire book or periodical may be made by the library at a library user's request, or by another library on behalf of a library user upon certain conditions being met. These conditions include the library determining after reasonable investigation that an authorized reproduction cannot be obtained at a reasonable price. Once made, the reproduction must become the property of the library user. The library must have no reason to believe that the reproduction will be used by the user for purposes other than private study, scholarship, and research, and the library must display the U.S. Copyright Office Register's Notice at the place library users make their reproduction requests to the library.

PHOTOCOPYING BY STUDENTS

Photocopying by students is subject to a fair use analysis as well. A single photocopy of a portion of a copyright-protected work, such as a copy of an article from a scientific journal made for research, may be made without permission. Photocopying all the assignments from a book recommended for purchase by the instructor, making multiple copies of articles or book chapters for distribution to classmates, or copying material from consumable workbooks, all require permission.



INTERLIBRARY LOAN (ILL)

The Santa Barbara City College Luria Library may participate in interlibrary loans without obtaining permission provided that the aggregate quantities of articles or items received by the patron do not substitute for a periodical subscription or purchase of a work. Santa Barbara City College follows the National Commission on New Technological Uses of Copyrighted Works (CONTU) Guidelines for defining aggregate quantities. The CONTU Guidelines state that requesting and receiving more than five articles from a single periodical within a calendar year or a total of six or more copies of articles published within five years prior from the date of request would be too many under CONTU.

If the articles or items being copied have been obtained through a digital license, the employee must check the license to see under what terms and conditions, if any, interlibrary loan is permitted.

Distance Education and Course Management Systems

In 2002, the Technology, Education, and Copyright Harmonization (TEACH) Act became law and expanded the latitude colleges and universities, including Santa Barbara City College, have for the performance and display of copyright-protected materials in a distance education environment, including through the use of Course Management Systems (CMS).

The copyright requirements for TEACH and CMS postings are similar to those of classroom handouts, but extend the traditional rules for those handouts to the digital transmission of materials to distance education students. If the use is spontaneous and will not be repeated, copyright permission is not required; however, the content may not remain posted for extended periods of time. If the use is planned, repeated, or involves works that have existed long enough that one could reasonably expect to receive a response to a request for copyright permission, the employee must obtain copyright permission.

Use the checklist at:

<http://www.utsystem.edu/ogc/intellectualproperty/teachact.htm#checklist>
to determine TEACH Act usage.

Reasonable Accommodation for Students with Disabilities

As an accommodation, exceptions may be made if an alternative format is required for a student with a disability. Students must sign a release that prohibits the copying,



sharing, or distribution for purposes other than using it for their own accommodation needs. (Title 28-Judicial Administration, Part 35--Nondiscrimination on the Basis of Disability in State and Local Governments, Subpart E--Communications * 35.160 General)

HOW TO OBTAIN COPYRIGHT PERMISSION

Permission to use copyright-protected materials, when required, should be obtained prior to using those materials. It is best to obtain permission in writing (including e-mail) and to ensure that the Santa Barbara City College Copyright Committee has a copy of each permission form or letter.

The time to obtain permission may vary and, where possible, it is recommended to start the permissions procedure at least six months prior to the time the materials will be used. If the employee needs a quicker permission, copyright owners may be able to respond more quickly if requested. . Often, the Copyright Clearance Center is the quickest one-stop resource for obtaining copyright permission.

Fact-Finding Questions

Once the employee has identified the materials to use and determined that copyright permission is required, the employee must locate the copyright holder. If the copyright holder is not listed on the work, locating the appropriate person or entity to grant permission may take some investigative and creative work.

The Copyright Office of the Library of Congress (www.loc.gov) may be of assistance in locating a copyright owner if the work is registered. Note, however, that copyright is automatically granted to all works upon their being written down and that registration with the Copyright Office is not required.

There are two primary options for obtaining permission to use the work:he employee may contact the copyright holder directly or may contact the Copyright Clearance Center. Employees should check with the area dean to determine if the institution already has an established process for obtaining copyright permission through the Copyright Clearance Center. If the department or campus does not have a centralized location or process for obtaining copyright permission, the employee may create an account with the Copyright Clearance Center at www.copyright.com.



Information in your Permission Request

The copyright holder or its agent will require the following information in order to provide permission:

- Title of the material,
- Creator/author of the material,
- Publisher of the material,
- Description of material,
- ISBN or ISSN, if applicable,
- Date of publication, if applicable,
- Purpose for reproducing the item (research, educational, etc.),
- How the material is to be reproduced (e.g., photocopied, digitized), and
- Where the reproduced material will be used or will appear and for how long.

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