

## **USE OF COPYRIGHTED MATERIALS IN TEACHING ACTIVITIES**

It is the policy of Rhode Island School of Design to comply with copyright law. Indeed, as an institution dedicated to the creation of art and design, we should be especially mindful of these issues. Artists' and designers' livelihoods are dependent in large part on the creation of, *and the respect of others for*, copyrights. Just as we wish to protect the economic value of our copyrights, so do others whose works we wish to use.

Copyright law imposes significant restrictions on our ability to use the copyrighted works of others in our teaching, but it also offers a number of opportunities and "safe harbors". This document provides a general outline of both the restrictions and our rights. Additional background on these and other copyright issues is available at the [General Counsel's web page](#).

In reading these materials, please keep in mind that they do not constitute, and should not be considered a substitute for, specific legal advice. The resolution of legal issues frequently hinges on slight changes in the facts and circumstances, and your particular situation may well be different from those described in these materials. If you have questions about your situation, please contact the General Counsel.

### **General Rule for Use of Copyrighted Material**

To begin with, the general "default" rule under copyright law is that it is an infringement to make or distribute copies of, make derivative works based upon, or publicly perform or display the copyrighted work of another\* without permission. This rule is quite broad in scope and encompasses – and therefore prohibits – almost any unlicensed use we might wish to make of another's work, including photocopying an article; uploading an image or text to the web; adapting a book or play into a film; or showing a video, playing a CD, or even singing a song to an audience. There are, however, a number of exceptions to this rule that allow us to use such works in the course of certain teaching activities without seeking permission:

### **Works in the Public Domain**

Works that have "passed into the public domain" are no longer subject to copyright protection and therefore may be used freely by anyone, in any way, and for any purpose, educational or otherwise (at least insofar as copyright law is concerned). Unfortunately, however, there is no central, comprehensive, and authoritative registry of public domain works; the rules governing public domain status are complicated; and there are many myths and misunderstandings. For example, it is *not* the case that a work is automatically in the public domain simply because it is available on the Internet or does not contain a copyright notice.

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\* How to determine whether a particular work is copyrighted and by whom is beyond the scope of these guidelines, but you should be aware that copyright protection extends quite broadly. A work may be protected by copyright even if it does not bear a copyright notice, has never been published or registered, has no literary or artistic merit at all, and/or is available on the Internet. Moreover, not only books and other print publications, but also paintings, drawings, sculptures, photographs, films, videos, music, and architecture, and even websites, e-mail messages, and graffiti – among other things – can be copyrighted. And ownership of a copy (or even the original) of a work does not necessarily include ownership of the copyright in that work. Given the vast breadth of copyright protection, therefore, it is safest to assume that a given work is copyrighted unless you know for sure that it is not.

While many such works are indeed in the public domain, those facts alone do not determine their status.

Two categories of works that clearly are in the public domain are (1) works that were first published in the United States before 1923 and (2) “works of the United States Government” (defined as works “prepared by an officer or employee of the United States Government as part of that person's official duties”, such as federal judicial opinions, presidential speeches, and congressional and federal agency reports), regardless of when (or whether) they were first published. For a chart summarizing the rules governing the public domain status of other works, see *When Works Pass into the Public Domain in the United States*. If a work that you wish to use does not fall into one of these two categories, and you are unable to determine its status from the chart, the safest course is to assume that the work is *not* in the public domain and to either find another applicable exception or seek permission.

### **Fair Use**

For institutions of higher education, the most important exception to copyright is the “fair use” doctrine. The fair use of a copyrighted work is, by statutory definition, “not an infringement of copyright”. Unfortunately, however, the definition of just what constitutes fair use is another subject that often is misunderstood.

The determination of whether a particular use is a “fair” one requires a case-by-case balancing of four subjective factors. In very general terms, a use is “fair” if it is for educational or other noncommercial purposes, draws more on the facts and ideas expressed in the underlying work than on its creative elements, involves only a relatively small portion of that work, *and* is unlikely to interfere significantly with the copyright owner’s ability to market that work. A classic example is quoting a few sentences or paragraphs of a book in a journal article. Other uses may also be fair, but it generally is not fair to use an entire work, and it is *not* enough, by itself, that your particular use is “educational” in nature or that you don’t charge for any copies you distribute. It also is not enough simply to credit your source (but if you do not, it may be plagiarism, a separate issue). For additional information on how to apply these factors, see this excerpt from *A Crash Course in Copyright* or contact the General Counsel.

### **Single Copies for Use in Teaching and Research**

Because of the uncertainties inherent in the general fair use analysis, there have been a number of efforts over the years to develop more concrete guidelines for specific common situations. Under one such set of guidelines negotiated by representatives from higher education and the publishing industry, it is generally accepted to be “fair use” for faculty to make single copies of the following for use in scholarly research, teaching, or preparation for teaching:

- A chapter from a book
- An article from a periodical or newspaper
- A short story, short essay, or short poem

- A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper

Keep in mind that these guidelines are intended to create a “safe harbor” and therefore represent the *minimum* of what is permissible, not the outer limits of fair use. Copying in excess of these guidelines *may* be a fair use *if* it meets the fair use test described above, but it will fall into a “gray area”. Accordingly, if you wish to deviate significantly from these guidelines, you may wish to consult first with the General Counsel.

### **Multiple Copies for Classroom Distribution and Use**

Under a similar set of negotiated guidelines, and with the same “safe harbor” caveat, it also is generally accepted to be fair use for faculty to make copies of copyrighted material and distribute them to their students for classroom use and discussion under the following conditions:

- The number of copies made of any given work may not exceed the number of students in the course
- The copies must be made “at the instance and inspiration of the individual teacher”
- The inspiration to use the work and “the moment of maximum teaching effectiveness” with respect to that work must be “so close in time that it would be unreasonable to expect a timely reply to a request for permission”
- Each copy must include a notice of copyright
- Any charge to the students may not exceed the actual cost of the copying
- The amount copied from any given work may not exceed the following:
  - Poetry: (a) a complete poem if less than 250 words and if printed on not more than two pages or (b) an excerpt of not more than 250 words from a longer poem (though either limit may be expanded to permit the completion of an unfinished line)
  - Prose: (a) a complete article, story, or essay consisting of less than 2,500 words or (b) an excerpt of not more than 1,000 words or 10% of any other prose work, whichever is less, but in any event a minimum of 500 words (though either limit may be expanded to permit the completion of an unfinished paragraph)
  - Illustration: a single chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue
  - "Special" works combining words and illustrations and consisting of fewer than 2,500 words in their entirety: an excerpt of up to two pages, but no more than 10% of the words
- The copying of any given item must be for only a single course and may not be repeated by the same teacher from term to term

- The copying must be limited to one short poem, article, story, or essay or two excerpts from the same author and three from the same collective work or periodical volume (other than current news periodicals and newspapers) during one class term
- No more than nine items in total may be copied for one course during one class term
- “Consumables” such as workbooks, exercises, and tests may not be copied
- Copying may not be used to create or substitute for anthologies, compilations, or other such collective works

### **Coursepacks**

Print or electronic coursepacks may be created under any of three conditions: the works to be copied are in the public domain (see above), permission has been obtained from the relevant copyright owners (see below), or the copying and distribution constitutes fair use. Coursepacks that consist solely of the types of material permitted under the guidelines for Single Copies for Use in Teaching and Research above *may* constitute fair use *if* the materials are used for only one term, *and* copyright notices are included, *and* the coursepacks are produced internally. (Note that the guidelines for Multiple Copies for Classroom Distribution and Use do not support the creation of coursepacks because of the size limitations and “spontaneity” requirement.) Even then, however, great care should be taken, particularly with respect to electronic coursepacks, which should be restricted to enrolled students by means of passwords or similar means. Under a series of recent cases, coursepacks that are produced by external commercial copying services without permission are unlikely to constitute fair use, and the fact that they are produced externally does not necessarily shield you or RISD from potential liability for infringement.

Because fair use rights with respect to coursepacks are so narrow, we recommend that permission be obtained for any work that is not in the public domain. Doing so will unfortunately result in increased costs, but educational permissions are in most cases quite reasonable, generally are considerably less than the cost of purchasing the relevant works, and can be added to the cost of the coursepack.

To facilitate the continued creation and use of coursepacks while complying with copyright, the RISD Library and risd|prints have teamed together to provide a new coursepack service. Faculty wishing to use coursepacks in their courses should submit a request to the Library on this electronic form, for each item to be included, by the same deadline by which book orders are due at the book store. The Library will then clear the necessary permissions through the Copyright Clearance Center and return the approved form to the faculty member, together with an estimate of the cost. The faculty member will then submit both the approved forms and the items to be included to risd|prints, which will create and distribute the coursepack in either print or CD format, adding the cost of the permissions to the purchase price. We encourage the use of CD coursepacks, as the lower production cost of that format will translate into savings for the students. As of now, risd|prints is the only college-authorized producer for coursepacks, and it will not produce coursepacks unless permissions have been obtained.

## **Reserves and E-Reserves**

If the permission fees for particular items are prohibitive, one alternative is to place those items on reserve in the Library. Under certain circumstances, the Library can make additional copies of the items for this purpose or even place the items on “electronic reserve” accessible through the web.

## **Performance and Display of Copyrighted Works in the Classroom**

Under a specific statutory exception to copyright, faculty and students may perform or display *any* copyrighted work in the course of face-to-face teaching activities in a classroom or studio, without seeking permission. For the purposes of this exception, to “perform” a work means to show a film or video, play music, recite a poem, act out a play, and so forth, while to “display” a work means to show a copy of it either directly or by means of a projection or similar system.

In order to qualify for this exception, the copy of an audiovisual work to be performed must have been made lawfully. While the Supreme Court has ruled that videotaping of broadcast programming for personal use constitutes fair use, it is unclear whether the subsequent use of such videotapes for classroom purposes is permitted other than under very limited circumstances. Note also that this exception *does not* authorize the making or distribution of copies of the work to be performed or displayed.

## **Permission**

If your desired use does not fall within any of the guidelines listed above, you need to acquire permission. Permission for books and articles can in many cases be obtained in a matter of minutes through the Copyright Clearance Center’s web site. (You also can obtain a quick estimate of the permission fee for such materials here.) As noted above, the Library has established an account with the Copyright Clearance Center and can clear the necessary permissions for you. To request the Library’s assistance, please submit a copy of this electronic form for each work for which you need permission.

If the work for which you are seeking permission is not available through the Copyright Clearance Center, you may be able to locate another applicable rights organization at the Crash Course in Copyright web site. Alternatively, you can modify and use this sample letter to request permission directly from the copyright owner.