

Augustana College Copyright Policy

I. Introduction

Members of the Augustana College community are often faced with questions regarding the appropriate use of works created by others including books, articles, video, music, images, and other intellectual property. The purpose of the Augustana College Copyright Policy is to provide answers to some of those questions, along with an overview of how federal copyright laws impact activities at Augustana College.¹

II. Copyright Protections

Copyright is a form of protection provided by federal copyright laws to the authors of “original works of authorship,” including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works. The 1976 Copyright Act generally gives the copyright holder the exclusive right to authorize others to reproduce the work, prepare derivative works based upon the work, distribute copies of the work to the public by sale or other transfer of ownership, and perform or display the work publicly.

There are many things that are not protected by copyright including the following: facts and ideas; titles; processes, methods, systems, and procedures; constitutions and laws of state governments; all works prepared by the United States Government; and materials that have passed into the public domain.

Copyright occurs automatically at the creation of new work. Work is copyrighted the moment it is fixed in a tangible medium of expression. Formal procedures such as copyright notice, registration, or publication are *not* required to obtain copyright.

It is illegal for anyone to violate any of the rights provided by the copyright law to the owner of copyright. These rights, however, are not unlimited in scope. Of important note, federal copyright law allows for many exceptions to use copyrighted works for educational purposes.

III. Using Copyrighted Works

Many occasions will arise when one may want to use the copyrighted works of others. The first step in this process is to determine whether in fact the work is copyrighted. Because copyright protection arises automatically when an original work is fixed in a tangible medium of expression, most works are indeed copyrighted. Copyright lasts from the moment it is created until 70 years after the death of the author, except for works produced by a company or employer in which case the copyright lasts 95 years from the date of publication. Certain very old works

¹ Much of this policy is taken with permission from Smith College, Marquette University, Providence College, University of Michigan, the Association of Research Libraries and from copyright legislation and legislative guides.

and material created by the United States government are in the “public domain” and may be freely used. Other copyrighted work may be used under the doctrine of “fair use.” In addition, face to face classroom use of copyrighted materials is allowed quite freely.

a. Public Domain Works

Works that are in the “public domain” are not protected by copyright and may be freely used. The following chart details works that are in the public domain.

Type / Date of Work	Protected From	Term
Works created by the US Government or its employees	No protection – government works are in the public domain and may be freely used	NA
Created 1/1/78 or after	When work is fixed in tangible medium of expression	Life + 70 years ¹ (or if work of corporate authorship, 95 years from publication, or 120 years from creation ² , whichever is first)
Published before 1923	Now in public domain	None
Published between 1923-1963	When published with notice ³	28 years + could be renewed for 67 years; if not so renewed, now in public domain
Published 1964-77	When published with notice	28 years from 1 st term; now automatic extension of 67 years for 2 nd term
Created before 1/1/78 but not published	1/1/78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12/31/2002, whichever is greater
Created before 1/1/1978 but published between then and 12/31/2002	1/1/1978, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12/31/2047, whichever is greater

1 Term of joint works is measured by life of longest-lived author

2 Works for hire, anonymous and pseudonymous works also have this term. 17 U.S.C. § 302(c).

3 Under the 1909 Act, works published without notice went into the public domain upon publication. Works published without notice between 1/1/78 and 3/1/89, effective date of the Berne Convention Implementation Act, retained copyright only if efforts to correct the accidental omission of notice was made within five years, such as by placing notice on unsold copies. 17 U.S.C. § 405.

b. Fair Use

The fair use doctrine, provided for by the Copyright Act, addresses the needs of educators, scholars and students by mitigating the rights of copyright owners. Fair use allows limited use of copyrighted material without permission for purposes such as criticism, parody, news reporting, research and scholarship, and *teaching*. There are four “fair use factors” that assist in evaluating whether a particular use of copyrighted work is fair. An analysis utilizing the four factors must be completed every time a copyrighted work is used as there are no hard and fast rules. While all four factors must be considered, not all factors have to be in favor of use to make the use fair.

Factor 1 - Purpose and character: Review whether the copyrighted work will be used for nonprofit, educational or commercial use. Courts have found the absence of financial gain alone is insufficient for a finding of fair use. Using works for educational purposes is a factor favoring fair use. The scale tips further in favor of fair use if access is restricted to students in a particular class through a password protected Moodle site or similar medium.

Factor 2 - Nature of copyrighted work: Consider the nature of the work, in particular, analyze whether the work is fact-based or creative work, whether it has been published, and whether it is out of print. For example, photocopies from a newspaper are more likely to be considered fair use than is the duplication of materials prepared for public consumption.

Factor 3 - Amount used, substantiality or portion: Using a small portion of a whole work would weigh towards fair use. Consider the proportion of the larger work that is copied and used and the significance of the copied portion.

Factor 4 - Market effect: A use is more likely to be fair if it does not harm the potential market for or value of the copyrighted work. The market effect factor is considered the most determinative of the four factors.

For assistance in analyzing these factors for individual cases, consider utilizing the “Fair Use Checklist” located on the Columbia University Libraries Copyright Advisory Office website: <http://copyright.columbia.edu/fair-use-checklist.html#>.

c. Classroom Use

The rules governing use of materials in a face to face classroom are broader than fair use, and those rules give more freedom to copy, display and distribute in class. Instructors may display or perform a work in class without obtaining permission or doing a fair use evaluation when your use is for instructional purposes in face to face teaching at a nonprofit educational institution.

IV. Fair Use Guidelines for Using Printed Materials

There are certain widely accepted parameters for use of copyrighted materials for educational fair use per federal copyright law. The following guidelines may prove helpful in determining what has been deemed fair use.

Single Copies for Scholarly Needs or Library Reserve
One chapter from a book
One article from a journal issue or newspaper
Multiple excerpts from a single book or journal issue will be accepted only if the total length of the submission is 10% or less of the total length of the book or journal issue
A short story, short essay or short poem
A chart, diagram, drawing, graph, cartoon or picture
Multiple Copies for Classroom Use

Include a prominent copyright notice and meet the tests for *brevity*, *spontaneity*, and *cumulative effect*

Brevity:

Prose – either (1) a complete article, story or essay of less than 2500 words, or (2) an excerpt from any prose work of not more than 1000 word or 10% of the work, whichever is less, but in any event an excerpt of up to 500 words

Poetry – (1) a complete poem if less than 250 words and if printed on not more than two pages, or (2) an excerpt of not more than 250 words

(Each of the numerical limits may be expanded to permit the completion of an unfinished prose paragraph or line of a poem)

Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or periodical issue

Special Works: Certain works in poetry or prose which may combine language with illustrations which fall short of 2500 words, may not be reproduced in their entirety. However, an excerpt comprising not more than two of the published pages of such a work, and containing not more than 10% of the words found in the text, may be reproduced.

Spontaneity: The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission

Cumulative effect: The copying of the material is only for one course and limited to one copy per student. Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during a term. There shall be not more than nine (9) instances of such multiple copying for one course during a term.

Source: HR 2223, § 107; Association of American Publishers www.publishers.org

V. Fair Use Guidelines for Course Management Systems and Electronic Reserves

When it comes to copyright, digital works are no different than print works. Making materials accessible through course management systems or electronic reserve systems raises significant copyright issues. It violates copyright law to use course management systems as a substitute for the purchase of books or other printed materials when a substantial portion of the material is required for educational purposes. The same copyright and fair use principles that apply to educational use of copyrighted works in printed form apply equally to their use in digital form. Making an electronic copy of a copyrighted work by any means is considered to be a reproduction and is subject to applicable copyright law, including the fair use doctrine (set forth above). Permission may be required for the use of copyrighted material as electronic course content even when such material is:

- available elsewhere on the internet;
- being used in a course for the first time, or;
- characterized for purposes of course use as optional, supplemental, or ancillary reading material, rather than as required, assigned, or recommended reading material.

No one should post digital course content consisting of copyrighted material without first either:

- obtaining the permission of the copyright owner; or
- determining in good faith after reasonable inquiry, and with the benefit of resources made available by the College for these purposes, that the intended use qualifies as fair use or other exempt or licensed use for which permission is not required.

In general, if permission and possible payment of royalties would be required to include the material in a printed course compilation, permission may also be required when making that material in digital form. Course reserves are to be used only as a supplement to assigned course texts and/or licensed course compilations. When readings are used as central course material in lieu of a textbook, licensed course compilations may be required. Course readings on electronic reserve must comprise only a small portion of the total assigned readings for any course. Materials included in "course packets" should not be included in electronic reserve systems for that course.

As a matter of fair use and without permission from the copyright holder, the library may scan short items or excerpts from longer items (such as an article from a journal, a chapter from a book or conference proceedings, or a poem from a collected work). With permission from the copyright holder, the library may scan an entire work (such as a complete book or technical report).

Whenever possible, is it preferable to link to materials already legally available online through the library web site or another site, rather than scanning and positing a digital copy.

As far as technology allows, access to copyrighted digital course content should be limited to students enrolled in the course, the faculty teaching the course, and other individuals requiring access for purposes of conducting the course. Access should be terminated when students have completed the course.

VI. Fair Use & Multimedia

Copyright laws must be considered when showing a film on campus or making copies of other multimedia. When showing films on campus, the key determination is whether the viewing would constitute a "public performance," and, if so, whether there are any exceptions that would allow you to proceed without obtaining a license. A performance is public if it is in a public place *or* if it is in any place where a substantial number of people who are not members of a family or who are not acquaintances of each other. If the movie is for entertainment purposes, you need to get a clearance or license for its performance. It is not necessary to obtain permission if you show the movie in the course of "face-to-face teaching activities" in a nonprofit educational institution, in a classroom or similar place devoted to instruction, if the copy of the movie being performed is a lawful copy. This exemption encompasses instructional activities relating to a wide variety of subjects, but it does not include performances for recreation or entertainment purposes, even if there is cultural value or intellectual appeal.

Besides use in classrooms, videocassettes and videodiscs that are owned by the College may ordinarily be viewed by students, faculty or staff at workstations or in small-group rooms in the Media and Technology Center. These videos may also be viewed at home (e.g., in a dorm room), so long as no more than a few friends are involved. Larger audiences, such as groups that might assemble in a residence hall livingroom, require explicit permission from the copyright owner for 'public performance' rights.

The following reflect generally acceptable fair use for other multimedia formats:

Media	Allowable Portion for Fair Use
Motion Media (e.g., video)	Up to 10% or 3 minutes, whichever is less
Text material	Up to 10% or 1000 words, whichever is less
Music, Lyrics, Music Video	Up to 10%, but no more than 30 seconds
Illustrations, Photographs	No more than 5 images from an artist/photographer, or no more than 10% or 15 works from a published collective work
Numerical Data Sets (e.g., databases)	Up to 10% or 2500 fields, whichever is less

VII. How to Obtain Copyright Permission

If "fair use" does not apply to a particular situation, then permission must be obtained from the copyright holder prior to use of the materials. It is best to obtain permission in writing (including email) and to retain a copy of such permission. The first step in obtaining permission is to identify the copyright holder. For many works, the publisher is the copyright holder. Look for a copyright notice such as "© 2008 ABCD Press." An increasing number of publishers prefer that permission requests are made using a form on their websites. Other may require that you made your request via fax or email. If the copyright holder does not have a set form for permission requests, consider mailing a letter and including a self-addressed stamped envelope for reply.

Not all works will include a copyright notice and in certain cases, the copyright may have changed hands since the time the notice was printed. It may be impossible to identify and locate the copyright holder for certain works, especially older material. Such works are called "orphan works." Users of orphan works should document all efforts made to identify the copyright holder and obtain permission.

There are a number of organizations available to help identify and contact copyright holders. The Thomas Tredway Library staff are available to help assist with obtaining copyright permission.

VIII. Course Packets

Course packets or "anthologies" (collections of articles, or chapters bound together) are perceived as substituting for textbooks and thereby reducing the potential market for copyrighted publications. Every article or chapter in a course packet, if derived from copyrighted material,

requires permission, either from the copyright owner (usually the publisher) or through a royalty fee paid to the Copyright Clearing Center. Permission needs to be requested for each term in which the course pack is assigned. Each item in the packet must also include a notice of copyright. Students or other purchasers of course packets may only be charged actual cost which may include the cost of processing copyright permissions, any royalty fees required by the copyright holder, and actual copying charges.

Adequate time (8 weeks at a minimum) should be allowed for obtaining copyright permissions. Augustana's Bookstore is able to obtain the necessary permissions on behalf of faculty members.

IX. Student Use of Copyrighted Materials

Students may download and print a copy of the electronic reserve material for the course(s) they are enrolled in or make a copy of a few pages of a book or journal article for the limited purpose of private study, scholarship or research. Under no circumstances may a student download and print a copy of the electronic reserve material for a course he or she is not enrolled in.

A student may not reproduce an entire book or substantial portions thereof, an entire chapter of a book, or a journal without permission from the copyright owner. Many such materials are already available by license online through the library.

Students should not share or distribute the electronic reserve or copyrighted materials with other students, friends, family, or business colleagues, even if the recipient is a student enrolled in the same course.

Students may not use electronic reserve material or copyrighted materials they have been given access to for commercial purposes or where such use would have an indirection relational to commercial activity. Materials provided to the students via electronic reserves should not be sold to or exchanged with anyone. Selling or exchanging such materials via online bookstores, online auction sites, coursebook exchange programs, classmates, or individuals violates copyright law.

If a student wishes to disseminate copyrighted materials to multiple recipients, the student should consult the library staff. Normally, the student or the library will be required to obtain permission from the copyright holder by contacting the copyright owner directly, the publisher or a collective rights organization such as the Copyright Clearance Center, Inc. (CCC). No student should engage in such widespread distribution without first obtaining permission.

X. Attribution

Copies of copyrighted works, regardless of their format, should include proper attribution and copyright notices. The following notice will be included with every reserve reproduction:

NOTICE CONCERNING COPYRIGHT LAW

THE COPYRIGHT LAW OF THE UNITED STATES (TITLE 17, UNITED STATES CODE) GOVERNS THE MAKING OF PHOTOCOPIES OR OTHER REPRODUCTIONS OF COPYRIGHTED MATERIAL. AUGUSTANA COLLEGE STRICTLY FORBIDS ANY COPYING OR DISTRIBUTION OF E-RESERVE MATERIALS FOR TRANSMISSION TO OTHERS. UNAUTHORIZED ELECTRONIC TRANSMISSION OF RESERVE MATERIAL MAY MAKE THE USER LIABLE FOR COPYRIGHT INFRINGEMENT.

XI. Augustana Copyright Assistance

The Director of the Library serves as the main copyright resource for the College. The Director of the Library exercises general oversight of the copyright function for the College and serves as the final authority for denials of requests made through the library, bookstore and other campus offices that have copiers for student and employee use.

XII. Copyright Resources on the Internet

Resource	Website
US Government Copyright Site	http://www.copyright.gov
Crash Course in Copyright (University of Texas)	http://www.utsystem.edu/OGC/IntellectualProperty/
The Campus Guide to Copyright Compliance for Academic Institutions	http://www.copyright.com/Services/copyrightoncampus/
Association of Research Libraries	http://www.arl.org
Columbia University Fair Use Checklist	http://copyright.columbia.edu/fair-use-checklist.html# .