

Library Copyright Compliance Policy

Policy #: 2012-03

Approved: 10/9/2012

Responsible Administrator: Dean Library Services

Responsible Office: Reference, Research, and Instruction Department

POLICY STATEMENT

The Library will engage in the reproduction and distribution of copyrighted works in accordance with USC Title 17, Section 108, which states:

“Except as otherwise provided in this title and notwithstanding the provisions of section 106, it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work except as provided in subsections... or to distribute such copy or phonorecord, under the conditions specified by Section 108 of Title 17, United States Code.” (b) and (c), or to distribute such copy or phonorecord, under the conditions specified by this section...”

Libraries may reproduce and distribute copyrighted materials according to Title 17, Section 108 when the following conditions apply:

The reproduction or distribution is made without any purpose of direct or indirect commercial advantage.

The collections of the library or archives are open to the public, including non-affiliated researchers in specialized fields of study.

The reproduction includes a notice of copyright that appears on the copy or phonorecord that is reproduced or includes a legend stating that the work may be protected by copyright, if no such notice already exists on the item.

REASON FOR POLICY

To provide information to assist Library staff in avoiding copyright infringement.

To educate users in the legal reproduction and distribution of copyrighted material.

To qualify for statutory “safe harbors” provided by the Copyright Law.

To codify Library practices in the legal reproduction of copyrighted materials.

APPLICABILITY AND/OR ACCOUNTABILITY

This policy applies to Library employees acting within the scope of their employment at FGCU. Individual employees, Library, and University are subject to liability laws and penalties in a case of copyright infringement.

DEFINITION OF TERMS

Copyright Act - Title 17, U.S. Code. protects “original works of authorship” “fixed in any tangible medium of expression”.

Copyrighted Works - U.S. Constitution provides for the rights of authors to control the reproduction and distribution of their creative works for a limited time. (U.S. Constitution, art. I, S.8, cl. 8.)

Copies - are material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term “copies” includes the material object, other than a phonorecord, in which the work is, first fixed.

Copyright Owner - The person or entity with exclusive rights comprised in a copyright to control the reproduction and distribution of a creative work. The copyright owner has exclusive rights to:

Reproduce copies of the work.

Prepare derivative works based on the copyrighted work

Distribute copies of the work by sale, rental, lease, or lending.

Publicly perform the work (if it is a literary, musical, dramatic, or choreographic work or a pantomime, motion picture or audiovisual work).

Publicly display the work (if it is a literary, musical, dramatic, choreographic, sculptural, graphic, or pictorial work — including the individual images of a film — or a pantomime).

The copyright owner may transfer any or all of these rights to another party.

Derivative Work - a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications, which, as a whole, represent an original work of authorship, is a “derivative work”.

Display - To display a work means to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images non-sequentially.

Fair Use - Notwithstanding the provisions of sections 106 and 106A, (that grants exclusive rights to copyright owners) the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords, or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.

In determining whether the use made of a work in any particular case is a fair use these four factors are considered:

Purpose or character of the work.

Amount of the work used.

Nature of the work used.

Effect on the commercial value of the work to the copyright owner.

Fixed Work - A work is "fixed" in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is "fixed" for purposes of this title if a fixation of the work is being made simultaneously with its transmission.

Infringement – Any violation of the exclusive rights of a copyright owner without authority, or a relevant statutory exception or limitation on the right at issue.

Literary Works - are works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied. Phonorecords - are material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known, or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term "phonorecords" includes the material object in which the sounds are first fixed.

Published Work - A work is "published" when copies are distributed to the public by sale or other transfer of ownership or by rental, lease, or lending. Publicly performing or displaying a work does not constitute publication.

Library Reproduction of Copyrighted Materials:

PROCEDURES (if applicable)

Provisions in the Copyright Law limit the rights of the copyright owner when the copyrighted material is being used or the purpose of criticism, comment, news reporting, teaching scholarship, or research. In addition, there are particular provisions exclusive to libraries and archives under certain conditions.

The FGCU Library determines copyright compliance through its interpretation of the following documents:

[Sections 107 and 108 of Copyright Act title 17, United States Code](#)

[Reproduction of Copyrighted Works by Educators and Librarians](#)

[Commission on New Technological Uses of Copyrighted Works, \(CONTU\) Guidelines](#)

[Fair Use guidelines of the copyright law and provisions of the TEACH Act \(S. 110.2, 1998\)](#)

[and the Digital Millennium Copyright Act \(2002\)](#)

The Library will refuse the reproduction of any material that it deems not in compliance with these copyright laws and guidelines.

Library Reproduction Policy:

General (Library copying, scanning, & digitization for archives, and general collections.)

Unpublished works. Up to three copies of an item may be duplicated when solely for purposes of preservation and security or for deposit for research use in another library or archives if:

(1) the copy or phonorecord reproduced is currently in the collections of the library or archives; and

(2) any such copy or phonorecord that is reproduced in digital format is not otherwise distributed in that format and is not made available to the public in that format outside the premises of the library or archives.

Published works may be reproduced solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored has become obsolete.

(A format shall be considered obsolete if the machine or device necessary to render perceptible a work stored in that format is no longer manufactured, or is no longer reasonably available in the commercial marketplace.)

The following circumstances must exist for the Library to reproduce published works:

the library has, after a reasonable effort, determined that an unused replacement is out of print, or cannot be obtained at a fair price; and

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 in lawful possession of such copy.

Outside the exceptions allowed by law, the right of libraries and archives to make reproductions and distribute such, apply to a single copy, made from the library's collections or from that of another library or archive upon the request of a user or another library.

Interlibrary Loan: Library as Requestor:

As the requesting party, the library must comply with Sections 108(e) & (g) of Copyright Law:

Reproducing portions of a work.

The Library may provide no more than one article or other contribution to a copyrighted collection or periodical issue, or a copy or phonorecord of a small part of any other copyrighted work, provided that:

the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and

the library will display prominently, at the place where orders are accepted, and/or including on the request form, a warning of copyright in accordance with requirements and proscribed and regulated by the Register of Copyrights.

Reproducing entire works.

The Library may copy an entire work, or a substantial part of it, from an item held in the collection or from that of another library or archive, ***if the library has first determined, on the basis of a reasonable investigation, that a copy or phonorecord of the copyrighted work cannot be obtained at a fair price.***

The following is prohibited:

Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. (Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately.)

There shall be no copying of, or from, works intended to be "consumable" in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.

Copying shall not::

- substitute for the purchase of books, publishers' reprints or periodicals,
- be directed by higher authority, or
- be repeated with respect to the same item by the same teacher from term to term.

No charge shall be made to the student beyond the actual cost of the photocopying.

Requesting a copy of an entire work.

The Library responsibilities are:

To determine that a copy cannot be obtained at a fair price.

The copy must become the property of the patron.

The Library should have no notice that the copy will be used for a purpose other than private study, scholarship or research.

The library should both display and have on its order form a "Warning of Copyright."

The library must not be aware or have substantial reason to believe, it is engaging in related or concerted reproduction or distribution of multiple copies of the same material.

The library must state that it has complied with copyright law. (not both copyright law and CONTU, since CONTU only applies to periodicals).

CONTU Guidelines quantify the maximum number of photocopied articles — five — that can be requested from the most recent five years of a periodical the library does not subscribe to. The “suggestion of five” is considered within the resource sharing community to be the “best practice” in copyright compliance and is a guideline almost universally followed.

Requesting copy of an entire periodical or an article from a journal or small parts of other works.

In addition to the guidelines itemized above, the Library is responsible for the following when requesting copying of an entire periodical. The Library must:

Make its request with a representation that it has complied with copyright law and the CONTU Guidelines; (using codes “ccl” or “ccg” on requests).

Pay royalties on any copy that exceeds the "suggestion of five."

Maintain records of the request for three years.

Interlibrary Loan: Library as Responder to Copying Requests:

The requesting library has responsibility to comply with copyright law and guidelines. Requests received through ILL Office must affirm that there is appropriate indication on the request that the requestor is in compliance with Copyright Law and/or CONTU Guidelines as appropriate. The Interlibrary Loan office is legally obligated to display prominently the following notice and to include this text verbatim on all request forms:

**NOTICE — WARNING CONCERNING
COPYRIGHT RESTRICTIONS**

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.

FGCU Library reserves the right to refuse to accept a copying order, from individuals or institutions, if in its judgment; fulfillment of the order would violate copyright law.

Course Reserves:

The "Reserve Room" is considered an extension of the classroom, so Copyright Law, particularly Section 107 and Fair Use guidelines apply to making multiple copies for classroom use for print and e-Reserve collections.

The Library considers the "four factors" stated in the statute on a case by case basis for determining Fair Use in its decision as to whether a particular request complies with the law. The four factors are:

The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes.

The nature of the copyrighted work.

The amount and substantiality of the portion used in relation to the copyrighted work as a whole.

The effect of the use upon the potential market for or value of the copyrighted work.

All factors must be considered and balanced when determining applicability of Fair Use.

Additional guidelines for adding materials to print and ereserve collections:

Only small parts of copyrighted works are placed on reserve for one semester without permission.

Generally no more than five copies of the same work are placed in Course Reserve Collection at one time, depending on class size.

Permission from the copyright owner is required if the same faculty member requests the same materials for the same class for more than one semester.

Library must use technological means to assure that only registered students of the course, the instructor, and appropriate library personnel may have access to the materials placed in e-reserve.

Course reserve items are removed from the Reserve Collection (print and e-reserves) at the end of each semester.

Copyright Permissions:

Library Services will obtain copyright permissions and pay reasonable royalty fees for items placed in the Reserve Collection that exceed Fair Use Guidelines.

The Library uses the online service of the Copyright Clearance Center to obtain the majority of the copyright permissions; occasionally rights holders must be contacted directly; permission may or may not be granted by the copyright holder.

Copyright permission is always needed when placing the following reproduced items (print or digital) in the Reserve Collection:

Print or digital material for more than one semester

All scanned and digitized items

Copyrighted workbooks, tests, test booklets, or answer sheets

Reproduced material that exceeds the Fair Use guidelines

Unsupervised Copying in the Library

Section 108(f)(1) does not hold the Library responsible for infringement committed by patrons using reproduction equipment 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 must include the following, but does not have to be verbatim:

<p style="text-align: center;">Copyright Notice</p> <p>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.</p>
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Access to Media and Digital Materials:

Media materials – The Library may reproduce media materials for purposes of preservation and archiving only. However, the Library does not accept requests for copying creative works to create anthologies, including slides, photographs, art work, videos, and DVDs for any use.

Requests for reproduction of media materials for any other purpose must be directed to the Office of Curriculum and Instruction – e-Learning Services.

Digital materials - The FGCU Library subscribes to streaming video collections, e-books, and online research databases for the use of affiliated students, staff and faculty. Users are encouraged to link to digital materials for use in teaching and research activities.

The Library will not add, nor provide links to, illegal copies of any kind to print or digital collections.

RELATED INFORMATION

See Appendices linked to this policy.

APPENDICES

Copyright Law & Guidelines

[U. S. Copyright Law](#)

U.S. Copyright Office

Reproduction of Copyrighted Works by Educators and Librarians

National Commission on New Technology Uses of Copyrighted Works. CONTU
Guidelines

Best Practices

American Association of University Professors (AAUP) "Copyrights and Wrongs" Ann Springer

<http://www.aaup.org/AAUP/issues/DE/copy.htm>

EDUCOM Code: Using Software: A Guide to the Ethical and Legal Use of Software for
Members of the Academic

Community <http://net.educause.edu/ir/library/html/code.html>

Library Copyright Alliance (LCA), whose members include the American Library Association, the
Association of

Research Libraries, and the Association of College and Research Libraries.

<http://www.librarycopyrightalliance.org/index.shtml>

American University. Center for Social Media. Documentary Filmmakers' Statement of Best
Practices in

Fair Use. <http://www.centerforsocialmedia.org/fairuse/best->

[practices/documentary/documentary-filmmakersstatement- best-practices-fair-use](http://www.centerforsocialmedia.org/fairuse/best-practices/documentary/documentary-filmmakersstatement-best-practices-fair-use)

Dance Heritage Coalition. Statement of Best Practices in Fair Use of Dance-Related Materials.

http://www.danceheritage.org/DHC_fair_use_statement.pdf

Checklists

Basic TEACH Checklist

<http://teaching.colostate.edu/guides/copyright/downloads/checklist.pdf>

Checklist for conducting a Fair Use analysis before using copyrighted materials. Cornell
University Copyright Center.

http://copyright.cornell.edu/policies/docs/Fair_Use_Checklist.pdf

Copyright Term and the Public Domain in the United States

<http://copyright.cornell.edu/resources/publicdomain.cfm>

Permission Sources

[Copyright Clearance Center](#) – The Library subscribes to the CCC to obtain permissions and
pay royalty fees when

required, for reproducing copyrighted works. Individuals may also license content through CCC

for course packs, reserves, course management systems, interlibrary loan and other classroom and educational uses.

- [The Recording Industry Association of America \(RIAA\)](#) is the trade organization that supports and promotes the creative and financial vitality of the major music companies. RIAA® members create, manufacture and/or distribute approximately 85% of all legitimate recorded music produced and sold in the United States.