

3344-17-03 Use of copyrightable materials policy.

Cleveland state university expects all members of the university community to respect copyright law (Title 17 of the United States Code). The principles of copyright law that apply to electronic course content are the same as those that apply to printed course material, regardless of whether the electronic content is textual or audio-visual, or where it is stored (e-reserves, blackboard, iTunesU, for example). If permission would be required for a print use, it shall be required for an analogous electronic use.

(A) Fair use determinations

The university affirms that the exceptions to a copyright owner's exclusive rights that are provided by the law, especially the fair use provision, are integral to the balance between exclusive rights and productive, socially beneficial new uses of works. A fair use determination requires a fact-specific analysis to be made and considered carefully prior to deciding whether or not permission is required for each specific use.

- (1) A fair use analysis should always be made by the faculty member who is placing, or requesting that, material be placed on electronic course reserves or in a course content system. This analysis can often be done via a quick mental review of the four fair use factors found in section 107 of the Copyright Act: The purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion used in relation to the entire work and the effect of the use on the potential market for or value of the copyrighted work. If the university libraries or the center for elearning have a concern that a use might not qualify as a fair use, a copy of a written/printed fair use evaluation shall be required from the faculty member. The university libraries and the center for elearning retain the right to refuse to copy or link to the proposed course content if the analysis is found to be questionable.
- (2) A printed evaluation can be obtained by use of the online fair use evaluator available at <http://librarycopyright.net/fairuse> (contains a useful, detailed explanation of the application of four factors). The

attached checklist can also be used to document a fair use decision. For many activities at Cleveland state university, the following circumstances will be especially important when relying on fair use:

- (a) Your use is nonprofit and educational,
 - (b) You are using only a small part of a work and no more than is needed to accomplish your teaching objective, and
 - (c) Access to the portion of a copyrighted work is restricted to students registered for the specific class in which it is needed.
- (3) In addition to the libraries' or center for elearning's copy, the faculty member should also retain a copy of the completed checklist or the printout from the fair use evaluator to show (if ever questioned by copyright holder) the good faith of that claim; this is especially important when all of the above circumstances do not apply to a particular use.
- (4) If a use is determined not to be a fair use, then the faculty member must obtain permission from the copyright holder and possibly pay for the use. The university libraries will be happy to help faculty find alternative materials when permission or fair use fails.
- (5) When relying on fair use, materials copied for online course content should be attributed properly and marked to indicate that they are subject to copyright protection, e.g., "This material may be protected by copyright," or "This material is subject to the copyright law of the United States."
- (6) Copyright protected course content should be kept behind password/authentication barriers so only students enrolled in the class can access it.
- (7) Materials should remain available only for a limited time,

usually no longer than necessary for a particular class use, after which they shall be removed. These are services that are provided by the Michael Schwartz library, the Cleveland-Marshall college of law library, and the center for elearning.

(B) Linking to copyrighted materials

The digital age has made potential course content available in a wide variety of ways, and faculty can often choose amongst several formats to make reading, viewing, and listening materials available to students. If it is possible to link to material that is either publicly available on the web or available to the Cleveland state university community through a database licensed (including the right to link to articles for use in course content systems) by the Michael Schwartz library, the Cleveland-Marshall college of law library, the center for elearning, or "OhioLINK," further permission is not needed to use that material.

(C) Making copies of copyrighted materials

(1) When it is necessary to make a copy of the material rather than simply linking to it as described above, permission is not needed if the work or works are in the public domain (generally, material published in the U.S. before 1923 or if U.S. federal government documents and some, but not all state and other governmental agency documents). Generally, a creative commons license allows for nonprofit educational use. For all other material, a fair use analysis shall be made; if fair use is determined not to apply to the specific use, permission shall be obtained.

(2) Only legally acquired materials can be copied for use in course content systems. Under section 108 (d) of the Copyright Act, libraries cannot request materials via interlibrary loan "ILL" for use in course content systems. Such copies of a copyrighted item are only to be used for the private research and study of the requester.